

7

THE
C A S E,
TREVETT against WEEDEN:

On INFORMATION and COMPLAINT, for refusing
Paper Bills in Payment for *Butcher's Meat*,
in Market, at Par with Specie.

Tried before the Honourable SUPERIOR COURT,
in the County of *Newport*, September Term, 1786.

A. L. S. O.

The Case of the Judges of said Court,

Before the Honourable GENERAL ASSEMBLY,
at *Providence*, October Session, 1786, on Citation, for dismissing said Complaint.

Wherein the Rights of the People to *Trial by Jury*, &c. are stated and maintained, and the Legislative, Judiciary and Executive Powers of Government examined and defined.

By *JAMES M. VARNUM*, Esq;

Major-General of the State of *Rhode-Island*, &c. Counsellor at Law, and Member of Congress for said State.

PROVIDENCE: Printed by JOHN CARTER. 1787.

57

T H E
E S S A I
T R A V E L L E R s a i n y M E E D R A :

On Information by Complaint, for Injuring
Persons in Pursuit of their Work,
in Market, at first with Specie.

tried before the Honourable SUPERIOR COURT,
in the County of Middlesex, December 1st 1786.



The Case of Success of this Court,

Before the Honourable GENERAL ASSEMBLY
at Middlesex County Session, 1786, on Consideration for giving
the first Commencement.

Wherein the Rights of the People to have a Free Govt. are
being set out, and the Legislative Assembly and
Executive Powers of Government examined and tested.

By JAMES MARSH, Esq.
Member of the House of Commons for Middlesex County
I was the Member of Congress for this State.

BOSTON: D. DODGE; Printed by John Carter. 1786.

To the P U B L I C.

THE author consents to the following publication, by the request of many worthy citizens, which he cannot, with propriety, refuse. He doth not expect any particular advantage or applause thereby, but will be fully satisfied, if, by his endeavours, any new lights may be reflected upon the subjects contained therein. And indeed the novelty as well as importance of the trials, in which every individual was interested, might of themselves excuse his presumption.

WHY should I mention presumption, when it is well known, that in this free country every one has a right to scribble, if he pleases, and no one can be injured, because no one is obliged to read. Reading however is the passion of many, as writing is that of some: If therefore the reader should find himself disgusted, he may derive one advantage, that of fixing in his mind the retention of more useful reading.

IT may be objected, that writing and publishing, without affording instruction or pleasure, are detrimental to the Republic, as much time may have been consumed thereby, which ought to have been occupied for valuable purposes. Without denying the charge, let those who have directly or indirectly contributed to the late political measures reflect how their time has been employed, in fabricating a system of revenue and finance, subversive of private contracts, and public faith! — Perhaps a view of contrasted blunder and absurdity may produce some good, when the force of argument would be exerted in vain.

BUT why should the author impose upon the reader a recital of his own tedious, indigested pleas? — Why did he not content himself with a simple relation of facts, and an enumeration of the principal arguments and authorities? — Because he is indolent, and found it less troublesome to himself to write from recollection, than to form a new

new arrangement and detail of the subject. Besides, the orators of Greece and Rome exhibited to the public, in the same way, their pleadings upon the most weighty occasions. And although the author bath not the vanity to compare himself to any the least of those orators, yet he feels a pleasure in attempting to imitate them, and to revive that part of ancient learning.

LET it be submitted to the candid, whether the frequent publication of pleadings at the bar, upon causes of importance, would not have a salutary tendency to reform the present manner, so replete with inaccuracies, absurdities, and (to the shame of some practitioners) scurrility itself?

IT is customary, in some countries, for the ladies to attend upon the trial of popular causes. What an excellent practice, and how admirably calculated to produce elegance of sentiment, delicacy of expression, and a polite address!—It is true, the presence of the fair sex may excite diffidence in the young practitioner; but how amiable is diffidence, how charming is modesty, in opposition to those ridiculous airs, which give to impudence an appearance of knowledge, and to pertness of speech the resemblance of elocution!

WHETHER the preceding observations bear any relation to the matters contained in the following sheets, is of very little consequence. For custom only renders any thing of the kind expedient.—To custom we submit, as a matter of course; but to rise above this foible, perhaps custom should be treated in her own way.

—**THE AUTHOR.**

—

[2]

Upon the last Monday of September, in the eleventh year
of the Independence of the United States, in the city of
Newport, and State of Rhode-Island, &c. was heard, before the
Superior Court of Judicature, Court of Assize, and General Gaol-
Delivery, a certain information, John Trevett against John
Weeden, for refusing to receive the paper bills of this State, in
payment for meat sold in market, equivalent to silver or gold :
And upon the day following the Court delivered the unani-
mous opinion of the Judges, that the information was not cog-
nizable before them.

THAT this important decision may be fully comprehended, it will be necessary to recur to the acts of the General Assembly, which superinduced the trial. — At the last May session, an act was made for emitting the sum of one hundred thousand pounds, lawful money, in bills, upon land security, which should pass in all kinds of business, and payments of former contracts, upon par with silver and gold, estimating an ounce of coined silver at six shillings and eightpence. Another act was passed in the June following, subjecting every person who should refuse the bills in payment for articles offered for sale, or should make a distinction in value between them and silver and gold, or who should in any manner attempt to depreciate them, to a penalty of one hundred pounds, lawful money; one moiety to the State, and the other moiety to the informer; to be recovered before either of the Courts of General Sessions of the Peace, or the Superior Court of Judicature, &c.

EXPERIENCE soon evinced the inadequacy of this measure to the objects of the Administration: And at a session of the General Assembly, specially convened by his Excellency the Governor, upon the third Monday of the following August, another act was passed, in addition to and amendment of that last mentioned, wherein it is provided, that the fine of one hundred pounds be varied; and that for the future the fine should not be

less than six, nor exceed thirty pounds, for the first offence: The mode of prosecution and trial was also changed, agreeably to the following clauses, "that the complainant shall apply to either of the Judges of the Superior Court of Judicature, &c. within this State, or to either of the Judges of the Inferior Court of Common Pleas within the county where such offence shall be committed, and lodge his certain information, which shall be issued by the Judge in the following form," &c. It is then provided, that the person complained of come before a Court to be specially convened by the Judge, in three days; "that the said Court, when so convened, shall proceed to the trial of said offender, and they are hereby authorized so to do, without any jury, by a majority of the Judges present, according to the laws of the land, and to make adjudication and determination, and that three members be sufficient to constitute a Court, and that the judgment of the Court, if against the offender so complained of, be forthwith complied with, or that he stand committed to the county gaol, where the said Court may be sitting, till sentence be performed, and that the said judgment of said Court shall be final and conclusive, and from which there shall be no appeal; and in said process no escoin, protection, privilege or injunction, shall be in anywise prayed, granted or allowed."

In consequence of a supposed violation of this act, John Trevett exhibited his complaint to the Hon. Paul Mumford, Esq; Chief Justice of the Superior Court, at his chamber, who caused a Special Court to be convened: But as the information was given during the term of the Court, it was referred into the term for consideration and final determination.

JOHN WEEDEN, being demanded and present in Court, made the following answer: "That it appears by the act of the General Assembly, whereon said information is founded, that the said act hath expired, and hath no force: Also, for that by the said act the matters of complaint are made triable before Special Courts, uncontrollable by the Supreme Judiciary Court of the State: And also for that the Court is not, by said act, authorized and empowered

empowered to impanel a jury to try the facts charged in the information ; and so the same is unconstitutional and void."

THIS answer was enforced, by the author of these strictures, nearly in the following words :

I do not appear, may it please the Honourable Court, upon the present occasion, so much in the line of my profession, as in the character of a citizen, deeply interested in the constitutional laws of a free, sovereign, independent State. And, indeed, whenever the rights of all the citizens appear to be essentially connected with a controverted question, conscious of the dignity of man, we exercise our legal talents only as means conducive to the great end of political society, general happiness. In this arduous, though pleasing pursuit, should my efforts appear too feeble to support the attempt, I shall derive a consolation in reflecting, that the learned and honourable gentleman at my right is with me in the defence.

WELL may a profound silence mark the attention of this numerous and respectable assembly ! Well may anxiety be displayed in every countenance ! Well may the dignity of the Bench condescend to our solicitude for a most candid and serious attention, seeing that from the first settlement of this country until the present moment, a question of such magnitude as that upon which the judgment of the Court is now prayed, hath not been judicially agitated !

HAPPY am I, may it please your Honours, in making my warmest acknowledgments to the Court, for permitting the information and the plea to be considered by them in their supreme judiciary capacity !—By this indulgent concession, we feel ourselves at liberty to animadvert freely upon the illegality of the new-fangled jurisdictions erected by the General Assembly in the act more immediately in contemplation. The embarrassments naturally accompanying a plea to the jurisdiction, by removing the cause from the Special Court into this Court, are totally removed ; and, with them, the painful necessity of considering

your Honours as individually composing so dangerous a tribunal. The idea of that necessity is truly alarming, and we cannot do justice to our own feelings, without expressing a fervent wish that it may hereafter be ever banished from the human breast !

IN discussing the several points stated in the plea, we must necessarily call in question the validity of the legislative act upon which the information is grounded. We shall attempt most clearly to evince, that it is contrary to the fundamental laws of the State, and therefore, as the civilians express it, a mere nullity, and void, *ab initio*. We shall treat, with decent firmness, upon the nature, limits and extent, of the legislative powers ; and deduce, from a variety of observations and authorities, that the Legislature may err, do err ; and that this act, if we confine ourselves to the subject matter of it, can only be considered as an act of usurpation ; but having been enacted by Legislators of whose integrity and virtue we have the clearest conviction, and of whose good intentions we have not a doubt, it will be viewed as an hasty resolution, inconsiderately adopted, and subject to legal reprehension.

THE parties named in the process are of no farther consequence, than as the one represents the almost forlorn hopes of an hitherto disappointed circle ; the other as a victim ; the first destined to the fury of their intemperate zeal and political phrenzy. Why should the abettors of this salutary act, as many are pleased to call it, retire behind the curtain, in the day of trial, unless something within them declares that all is not right ? Or, dare they not appear in the character of informers ? Why should their artillery be levelled against an unfortunate man, who, not three weeks since, was an object of charity in the streets of Newport ; and now, “* poor pensioner upon the bounties of an hour,” is called upon to answer, criminally, for refusing beef at fourpence the pound, when it cost him sixpence upon the hoof, although purchased of some of the most influential promoters of the present measures ? — Were they dubious of the event, or did they feel a reluctance in attacking gentlemen

* Young.

of business, character and fortune, who daily and openly trans-
late upon this favourite idol?—Were they not acquainted with a
Gibbs, and are they not intimately connected with a Cooke?—

INCOMPARABLE was the sentiment of a fine writer, “* that in a democratical government, the customs and manners controul the laws:” And whenever an attempt is made to force upon the people a system repugnant to their principles, and at which every sentiment of integrity must reluct, the authors themselves, however sanguine in their hopes, will ever betray an instability in the execution, that generally forebodes disappointment and chagrin. To your Honours, however, it is submitted to determine, how far the observation will apply to the cause on trial. The peace, the honour, the safety of the State, depend upon, and the fate of unborn millions may be affected by it.

THE first point to which we solicit the attention of the Hon. Court is, that the act of the Legislature, upon which the information is founded, hath expired..

IN the preamble to this act it is stated, “ that the usual and stated methods and times of holding Courts within this State are impracticable, inexpedient; and inapplicable to the true intent and meaning of the said act (the act inflicting the hundred pounds penalty) and altogether insufficient to carry into effect the good purposes of this Legislature, touching the same.”

THEN follows: “ Be it enacted, that the mode of procedure, and the method of law process, against any person or persons who shall be guilty of a breach of the *aforesaid* act, &c. shall be as followeth.” Hence, it is evident, that the principal aim in this act, is so to modify and vary the process, as to enforce the sanctions of the former; lessening, however, the fine, to render prosecutions more familiar and practicable. Examine the act with the most critical exactness; there is not a clause in it which creates a crime, or defines or qualifies an action, so as to infer the idea of criminality. Observe therefore a subsequent clause, which enacts,

* Montesquieu.

enacts, " that the legal mode of carrying the afore-recited act into execution shall be in force fully and completely, for every purpose therein mentioned and contained, until all offences against which have been committed and complained of, and which may be committed and complained of, until the expiration of ten days after the rising of this Assembly, may be fully heard, tried and determined ; any thing in this act to the contrary in anywise notwithstanding." What then hath become of the *legal mode*, pointed out in the act, since the expiration of the *ten days* therein mentioned ? What other legal mode, than that in question, is taken notice of ? That is the only antecedent to the limiting clause ; at least, it is the last antecedent ; and so grammatically, as well as legally, is intended to continue in force the said space of *ten days*.

* *The legal mode* " shall be in force" " until the expiration of ten days ;" consequently, at the expiration of ten days there was an end of it.

* For penal statutes are to be construed strictly ; not only with regard to the crime and the penalty, but also with respect to the process ; more especially when the manner of trial is repugnant to the common law.

I AM sensible that statutes, made *pro publico bono* (not *malo*, as in the present instance) claim a liberal construction. Of that kind may be deemed, in legal contemplation, the emitting act, whereby it may be supposed that the means of commerce and other business are enlarged : But this act and the former penal act becoming one, are altogether penal. They are not directed to the public good ; nor are they so formed, as to be entitled to liberal construction.

SHOULD it be objected, that this construction would manifestly oppose and frustrate the general intent of the Legislature ; I answer, the Courts of law will endeavour to establish the actual meaning of the Legislature, if not opposed by a plain, legal construction :

struction : But as they are sworn to judge according to law, they cannot depart from this rule of decision.

But, may it please your Honours, we do not place our principal reliance upon this objection, although in legal propriety we might safely meet the consequences. The whole frame of the act is so replete with blunders, contradictions and absurdities, that not a trace of law-learning can be discovered in it. And to the honour of those of the professional gentlemen, who prefer the good of their country to the paltry gains of business, they had not any thing to do with it ; nor any one else who understood, or, if he understood, duly considered what he was about.

We now proceed to the second point stated in the plea, " that by the act of the Legislature special trials are instituted, uncontrollable by the Supreme Judiciary Court of the State."

THERE are, in all free governments, three distinct sources of power, the legislative, the judiciary and executive. The judiciary power is more or less perfect, as the formation of the Courts of law tends to produce certainty and uniformity in legal determinations. And indeed without certainty and uniformity in the judicial tribunals, the best possible system of laws will prove entirely inadequate to the security of the people. For law itself is but a rule of action ; and consequently its very existence is destroyed, when contradictory decisions are admitted upon the same point. From hence may clearly be inferred the necessity of a Supreme Judiciary Court, to whose judgments, as the only conclusive evidence in law questions, all subordinate jurisdictions must conform. Such is the Court before which I now have the honour of appearing. Into the nature and extent of whose jurisdiction permit me, with humble deference, to enquire.

IN the charter, granted by King Charles the Second, it is granted, to the Governor and Company, when convened in their legislative capacity, " to appoint, order and direct, erect and settle, such places and Courts of Jurisdiction, for the hearing and determining of all actions, matters and things, within the said

Colony

Colony and Plantation, and which shall be in dispute, and depending there, as they shall think fit; and also to distinguish and set forth the several names and titles, duties, powers and limits, of each Court, office and officer, superior and inferior." In consequence whereof, the General Assembly, in the year 1729, established this Court in its present form " † a Superior Court of Judicature, Court of Assize, and General Gaol-Delivery, over the whole Colony, for the regular hearing and trying all pleas, real, personal and mixed, and all pleas of the Crown." That they shall have " the same power and authority, in all matters and things in this Colony, as the Court of Common Pleas, King's Bench, or Exchequer, have, or ought to have, in that part of Great-Britain heretofore called England, and be empowered to give judgment in all matters and things before them cognizable, and to award execution thereon."

THIS establishment hath never been varied, nor the jurisdiction of the Court diminished. The powers annexed to it were derived from the charter, from our original constitution; and by an uninterrupted exercise have become matters of common right. In point of antiquity, we find them existing, in full vigour, in the earliest periods of which we have any regular traces of the English constitution. It is unnecessary however to look any farther back than to the Norman reigns, when justice was exercised in one Court, called the " * *aula regis* ;" "out of this Court the Courts of Common Pleas and Exchequer seem to have been derived, some time before the making the Statute of Magna Charta; the former of which Courts properly determines pleas merely civil, and the latter those relating to the revenue of the Crown. And after the erection of these Courts, the Supreme Court seems by degrees to have obtained the name of the Court of King's Bench, and hath always retained a supreme jurisdiction in all criminal matters."

THE extent of these powers is well defined by the author last referred to, as well as by most of the writers upon the subject. " † There is no doubt but that this Court, being the highest Court

of common law, hath not only power to reverse erroneous judgments, given by Inferior Courts, but also to punish all inferior Magistrates, and all officers of justice, for all wilful and corrupt abuses of their authority."

It commands, prohibits and restrains, all inferior jurisdictions, whenever they attempt to exceed their authority, or refuse to exercise it for the public good, or upon the application of individuals. There are many instances, I must confess, in which no appeal is allowed from other Courts to this Court; and in such cases it will not interpose its supreme controul, unless the other Courts exceed their authority, or otherwise, as before mentioned.

LET us illustrate the subject by reflecting, for a moment, upon the establishment of our Courts of General Sessions of the Peace. They are five in number, corresponding to the five counties of the State. They have cognizance of all crimes not capital, arising within their respective districts, and their jurisdictions are perfectly equal. Suppose them exercising their legal judgments upon the same law; and that this law is of a complicated nature, admitting of different constructions, both in the definition of the crime, and the mode of punishment: May we not, must we not, conclude, that the same law would have different operations in the different counties?—Hence arises the necessity of a supreme controul, of a common standard, to which the opinions of these five Judicatures shall be conformable. The citizens are entitled not only to liberty, arising from the security which the laws afford, but they are equally entitled, and entitled to equal liberty. They must, therefore, they will apply to one tribunal, as to a focal point, where the knowledge of the law is concentered, and from whence its voice will be heard with irresistible conviction, confirming the principles of universal equality.

HAD the cognizance of informations been confined to the Courts of Sessions only, the evil might have been remedied, without appeal, by writs of Certiorari, Prohibition, Mandamus and Procedendo; but by an unheard of arrangement in the special

C jurisdictions,

jurisdictions, the Judges of this Court are precisely upon a level with those of the Sessions. Their jurisdiction is concurrent, cumulative and equal. Consequently there would not be a propriety in applying to this Court, in their supreme judicial capacity, to correct the errors and restrain the excesses that might arise from oppressive determinations. For in the second, they might counteract their first deliberations, or refuse to grant redress: But by their first decisions, as a Special Court, a legal prejudice would naturally be formed in the minds of the Judges individually, which might totally obstruct the avenues to justice. The pride of opinion is more or less prevalent in all men, however exalted their stations; and however conformably the intention may be to the principles of rectitude, the judgment will be biased by pre-existing opinions.

MAKING every possible concession for the sake of the argument, the Supreme Judiciary Court could only correct the errors of its own Judges, determining in the Special Court; and therefore the extravagancies that might accompany the proceedings of the other five Courts, could not, in any possible case, be reprehended.

May it please your Honours,

As all the glory of the solar system is reflected from yonder resplendent luminary, so the irradiations of the inferior jurisdictions are derived from the resplendent controul of this *primum mobile* in the civil administration. Under its genial influence, therefore, we beg liberty to consider the last point submitted to the judgment of the Court, "that by the act of the Legislature the Court is not authorized or empowered to impannel a jury for trying the facts complained of in the information."

THE proposition cannot be controverted: The expressions in the act, "that the majority of the Judges present shall proceed to hear, &c. without any jury," do not require a comment.

SHOULD it be objected that this clause of the act only empowers the Judges to try the fact, when the parties will agree to waive the

the trial by jury, it will be sufficient to answer, that the General Assembly intended directly the contrary. It is well known by all present, that on one day this clause was rejected, but on the day following (in consequence of a nocturnal *imperium in imperio*, or convention of part of the members) a motion was made for receding, and they did recede accordingly. The general tenor of the act was so repugnant to the honest feelings of the people, when excited by sober reflection, that the junto out of doors, and possibly some leading men within, were apprehensive that convictions would not take place in the usual mode of trial. They aimed therefore at a summary proces, flattering themselves that the Judges, being elected by the Legislators, would blindly submit to their sovereign will and pleasure. But, happy for the State, our Courts in general are not intimidated by the dread, nor influenced by the debauch of power! —

THIS part of the subject, and which is by far the most important, will require a more ample discussion than the preceding. I must therefore beg the attention of the Honourable Court to the following considerations: That the trial by jury is a fundamental right, a part of our legal constitution: That the Legislature cannot deprive the citizens of this right: And that your Honours can, and we trust will, so determine.

“ † By the Great Charter of Liberties, which was obtained sword in hand from King John; and afterwards, with some alterations, confirmed in Parliament by King Henry the Third, his son, which charter contained very few new grants; but, as Sir Edward Coke observes, was for the most part declaratory of the principal grounds of the fundamental laws of England. Afterwards, by the statute called *Confirmatio Cartarum*, whereby the Great Charter is directed to be allowed as the common law, all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches, and read twice a year to the people; and sentence of excommunication is directed to be constantly denounced against all those that by word, deed or counsel, act contrary thereto, or in any degree infringe it.

Next by a multitude of subsequent corroborating statutes (Sir Edward Coke, I think, reckons thirty-two) from the First Edward to Henry the Fourth. Then, after a long interval, by the Petition of Right; which was a parliamentary declaration of the liberties of the people, assented to by King Charles the First in the beginning of his reign. Which was closely followed by the still more ample concessions made by that unhappy Prince to his Parliament, before the fatal rupture between them; and by the many salutary laws, particularly the *Habeas Corpus* act, passed under Charles the Second. To these succeeded the Bill of Rights, or declaration delivered by the Lords and Commons to the Prince and Princess of Orange, February 13, 1688; and afterwards enacted in Parliament, when they became King and Queen: Which declaration concludes in these remarkable words: “ And they do claim, demand, and insist, upon all and singular the premises, as their undoubted rights and liberties.” And the act of Parliament itself recognizes “ all and singular the rights and liberties, asserted and claimed in the said declaration, to be the true, ancient and indubitable rights of the people of this kingdom.” Lastly, these liberties were again asserted, at the commencement of the present century, in the act of settlement, whereby the Crown was limited to his present Majesty’s illustrious house, and some new provisions were added at the same fortunate æra, for better securing our religion, laws, and liberties; which the statute declares to be “ the birthright of the people of England;” according to the ancient doctrine of the common law.* The same elegant writer, who appears to possess the highest degree of information in legal history, observes, when speaking of this palladium of liberty*, that “ it is a trial that hath been used time out of mind in this nation, and seems to have been coeval with the first civil government thereof. Some authors have endeavoured to trace the original of juries up as high as the Britons themselves, the first inhabitants of our island; but certain it is, that they were in use among the earliest Saxon Colonies, their institution being ascribed by Bishop Nicholson to Woden himself, their great Legislator and Captain. Hence it is, that we may find traces of juries in the laws of all those nations.

nations which adopted the feudal system, as in Germany, France, and Italy ; who had all of them a tribunal composed of twelve good men and true, “*boni homines*,” usually the vassals or tenants of the Lord, being equals or peers of the parties litigant: And, as the Lord’s vassals, judged each other in the Lord’s Courts ; so the King’s vassals, or the Lords themselves, judged each other in the King’s Court. In England we find actual mention of them so early as the laws of King Ethelred, and that not as a new invention. Stiernhook ascribes the invention of the jury, which in the Teutonic language is denominated *nembda*, to Regner, King of Sweden and Denmark, who was cotemporary with our King Egbert: Just as we are apt to impute the invention of this, and some other pieces of juridical polity, to the superior genius of Alfred the Great ; to whom, on account of his having done much, it is usual to attribute every thing : And as the tradition of ancient Greece placed to the account of their own Hercules whatever achievement was performed superior to the ordinary prowess of mankind. Whereas the truth seems to be, that this tribunal was universally established among all the northern nations, and so interwoven in their very constitution, that the earliest accounts of the one give us also some traces of the other. Its establishment however and use, in this island, of what date soever it be, though for a time greatly impaired and shaken by the introduction of the Norman trial by battle, was always so highly esteemed and valued by the people, that no conquest, no change of government, could ever prevail to abolish it. In Magna Charta it is more than once insisted on as the principal bulwark of our liberties: But especially, by cap. 29, that no freeman shall be hurt, in either his person or property, “*nisi per legale judicium parium suorum vel per legem terrae.*” A privilege which is couched in almost the same words with that of the Emperor Conrad, two hundred years before : “*Nemo beneficium suum perdat, nisi secundum consuetudinem antecessorum nostrorum et per judicium parium suorum.*” And it was ever esteemed, in all countries, a privilege of the highest and most beneficial nature.”

FROM these passages in Judge Blackstone’s *Commentaries*, from the variety of authorities to which he refers, and from many others

others of the greatest reputation, it most clearly appears, that the trial by jury was ever esteemed a first, a fundamental, and a most essential principle, in the English constitution. From England this sacred right was transferred to this country, and hath continued, through all the changes in our government, the firm basis of our liberty, the fairest inheritance transmitted by our ancestors !

THE settlers in this country, from whom we are descended, were Englishmen : They gloried in their rights as such : But being persecuted in matters of religion, over which no earthly tribunal can have the controul, they bravely determined to quit their native soil, to bid a final adieu to the alluring charms of their situation, and commit their future existence to that Almighty Power, whose authority they dared not to infringe, but in whose protection they could safely confide. They tempted the foaming billows, they braved, they conquered the boisterous Atlantic, and rested in an howling wilderness, amidst the horrid caverns of the untamed beasts, and the more dangerous haunts of savage men ! They retained their virtue, their religion, and their inviolable attachment to the constitutional rights of their former country. They did not withdraw or wish to withdraw themselves from their allegiance to the Crown, but emigrated under a solemn assurance of receiving protection, so far as their situation might require, and other circumstances render practicable.

THE laws of the realm, being the birthright of all the subjects, followed these pious adventurers to their new habitations, where, increasing in numbers, amidst innumerable difficulties, they were formed into Colonies by royal Charters, in nature of solemn compacts, confirming and enlarging their privileges.

IN the Charter granted to our forefathers, the following paragraph claims our particular attention : " That all and every the subjects of us, our heirs and successors, which are already planted and settled within our said Colony of Providence Plantations, which shall hereafter go to inhabit within the said Colony, and all and every of their children, which have been born there, or

on the sea going thither, or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects, within any of the dominions of us, our heirs or successors, to all intents, constructions and purposes whatsoever, as if they, and every of them, were born within the realm of England."

THIS concession was declaratory of, and fully confirmed to the people the Magna Charta, and other fundamental laws of England. And accordingly, in the very first meeting of the General Assembly, after receiving the charter, in the year one thousand six hundred and sixty-three, they made and passed an act, "declaring the rights and privileges of his Majesty's subjects within this Colony," whereby it is enacted, " * that no freeman shall be taken or imprisoned, or be deprived of his freehold or liberty, or free customs, or be outlawed, or exiled, or otherwise destroyed, nor shall be passed upon, judged or condemned, but by the lawful judgment of his peers, or by the laws of this Colony : And that no man, of what estate or condition soever, shall be put out of his lands and tenements, nor taken, nor imprisoned, nor disinherited, nor banished, nor any ways destroyed, nor molested, without for it being brought to answer by due course of law. And that all rights and privileges, granted to this Colony by his Majesty's Charter, be entirely kept and preserved to all his Majesty's subjects, residing in or belonging to the same."

THIS act, may it please the Honourable Court, was not creative of a new law, but declaratory of the rights of all the people, as derived through the Charter from their progenitors, time out of mind. It exhibited the most valuable part of their political constitution, and formed a sacred stipulation that it should never be violated. It would be a pleasing, and perhaps an useful employment, to trace and point out the numerous instances wherein the General Assembly have re-asserted these solemn rights ; but time will not admit of a minute detail. I cannot however be entirely silent upon this head.

AT

AT their September session, in the year one thousand seven hundred and sixty-five, "the General Assembly taking into the most serious consideration an act, passed by the British Parliament at their last session, for levying stamp-duties, and other internal duties, in North-America, resolved,

" * THAT the first adventurers, settlers of this his Majesty's Colony and Dominion of Rhode-Island and Providence Plantations, brought with them, and transmitted to their posterity, and all other his Majesty's subjects, since inhabiting in this his Majesty's Colony, all the privileges and immunities that have at any time been held, enjoyed and possessed, by the people of Great-Britain."

AFTERWARDS, at October session, in the year one thousand seven hundred and sixty-nine, they unanimously passed the following resolution: " † That all trials for treason, misprision of treason, or for any felony or crime whatsoever, committed and done in his Majesty's said Colony and Dominion, by any person or persons residing therein, ought of right to be had and conducted in and before his Majesty's Courts held within the said Colony, according to the fixed and known course of proceeding; and that the seizing any person or persons, residing in this Colony, suspected of any crime whatsoever, committed therein, and sending such person or persons to places beyond the sea to be tried, is highly derogatory of the rights of British subjects; as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and producing witnesses on such trial, will be taken away from the party accused."

THE attempts of the British Parliament to deprive us of this mode of trial were among the principal causes that united the Colonies in a defensive war, and finally effected the glorious revolution. This is evident from the Declaration of Rights made by the first Congress, in October, in the year one thousand seven hundred and seventy-four: The preamble states, " that the inhabitants of the English Colonies, in North-America, by

the

the immutable laws of nature, the principles of the English constitution, and the several charters and compacts, have the following rights," the fifth of which is,

" THAT the respective Colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law."

At the same time they enumerated the several acts of the British Parliament to which they declared they could not submit, particularly " 12 Geo. 3, chap. 24, intituled, " an act for the better securing his Majesty's dock-yards, magazines, ships, ammunition and stores," which declares a new offence in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorizing the trial of any person charged with the committing any offence described in the act out of the realm, to be indicted and tried for the same in any shire or county within the realm."

In pursuance of the same principle, upon the ever memorable fourth of July, in the year one thousand seven hundred and seventy-six, when the rights of the United States were exhibited in a new blaze of glory! When, to support them, the fathers of their country, " with a firm reliance on the protection of Divine Providence, mutually pledged to each other their lives, their fortunes, and their sacred honour!" When they submitted " to a candid world" the catalogue of their complaints against the King of Great-Britain, they charged him with " depriving us, in many instances, of the benefits of trial by jury *."

HERE let us pause! If the first act of the English Parliament now upon record, containing the great charter of the privileges of the subjects:—If the exercise of those privileges for ages:—If the settlement of a new world to preserve them:—If the first solemn compact of the people

* Art. Confederation.

of this State:—If the sacred declarations of the Legislature at different periods, and upon the most important occasions:—If the solemn appeal to heaven of the United States:—In short, if the torrents of blood that have been shed in defence of our invaded rights, are proofs, then have we triumphed in the cause of humanity, then have we shewn that the trial by jury is the birthright of the people!

ASTONISHED am I, may it please the Honourable Court, that a doubt should have arisen in the mind of any, respecting the legal construction of our Magna Charta, our declaration of rights! Some of our warmest politicians, whose heads are undoubtedly wrong, and it is greatly to be feared their hearts are not right, have boldly asserted, that the clause which declares “that no freeman, &c. shall be tried, &c. but by the lawful judgment of his peers, or by the law of the Colony,” &c. clearly authorizes any other mode of trial than that by jury, should the Legislature frame a law for that purpose. That their act would become the law of the land, and so the special jurisdictions are perfectly conformable to the letter and spirit of our constitution.

Is it possible that these pretenders to the knowledge of law should be serious, when they avow so dangerous an opinion?—If they are, let them be informed that they contradict the wisdom and the practice of ages. That whenever a statute makes mention of “the law of the land,” it refers either to a particular pre-existing law, to the system of laws in general, or to the mode of legal process.

LORD Coke, in his readings upon the statute, hath fully demonstrated that the clause “or by the law of the land,” regards the process only. That the particle *or* is to be construed conjunctively. And so the sentence will read, “by the lawful judgment of his peers, by, or according to, the law of the land,” or, “and by the law of the land:” That is to say, by bill, plaint, information, or in any other legal manner.

THERE are many instances in the books of a similar construction. I shall produce only one, * the case of Barker against Sureties.

“ On a special verdict in ejectment, the question turned upon these words in a will, viz. I give the said premises to my grandson, his heirs and assigns; but in case he dies before he attains the age of twenty-one years, *or* marriage, *and* without issue, then, and in such case, he devised the same to the defendant. The fact was, the grandson attained twenty-one, and died, having never been married. And it was insisted, that the attaining twenty-one was a performance of the condition, and vested the estate absolutely in the grandson, under whom the lessor of the plaintiff claimed. And judgment was accordingly given in the county Palatine of Durham, whereof error was brought in *banco regis*.

“ And, after several arguments, the Court affirmed the judgment, upon the authority of Price against Hunt in Pollexf. 645, where the word *or* was construed conjunctively. And they said they would read this without the word *or*, as if it run, “ and if he dies before twenty-one, unmarried and without issue;” which he did not do, for one of the circumstances failed. And all put together are but in the nature of one contingency; and it was considerable, that this was not a condition precedent, but to destroy an estate devised by the former words in *fee*.”

* I RECOLLECT in an excellent treatise of law in general, subjoined to the memoirs of the House of Brandenburgh, written by that great legislator, the illustrious Frederick, when speaking of the laws of England, he quotes the heads of Magna Charta; and when speaking of this part in particular, his words are, “ that nobody shall be imprisoned, or deprived either of life or estate, without being judged by his peers, and according to the laws of the kingdom.”

THE framers of this act however, and the supporters of the present measure, are not without a precedent; and so cannot engross all the honour to themselves. And lest they should endeavour to palm themselves upon the deluded as originals, we will produce them an instance from the reign of Henry VII. as similar to the present, as the image in the mirror is to the substance.

THAT great oracle of the law, Lord Coke, records it in the following manner: “ * Against this ancient and fundamental law, (trial by jury) and in the face thereof, I find an act of Parliament made, that as well Justices of Assize, as Justices of Peace (without any finding or presentment of twelve men) upon a bare information for the King before them made, should have full power and authority, by their discretion, to hear and determine all offences and contempts, committed or done by any person or persons, against the form, ordinance and effect, of any statute made and not repealed, &c.—By colour of which act, shaking this fundamental law, it is not credible what horrid oppression and exactions, to the undoing of infinite numbers of people, were committed by Sir Richard Empson and Edmund Dudley, being Justices of Peace through England. And upon this unjust and injurious act (as commonly in like cases it falleth out) a new office was erected, and they made masters of the King’s forfeitures. But at the Parliament holden in the first year of Henry VIII. this act of the eleventh of Henry VII. is recited and made void. For that by force of said act it was manifestly known, that many sinister and crafty, feigned and forged, informations had been pursued against divers of the King’s subjects, to their great damage and wrongful vexation. And the ill success hereof, and the fearful end of those two oppressors, should deter others from doing the like, and should admonish Parliaments, that instead of this precious trial by jury, they bring not in absolute and partial trials by discretion.”

WELL may the countenances of certain gentlemen be changed.—Well may their trembling limbs denote the perturbation of their minds.—Well may “ their hearts quake within them.”—For all others, who, like Empson and Dudley, violate the constitutional laws of their country, deserve, and, if they persist in their career, will probably meet their fate !

BUT we shall proceed, with the permission of your Honours, to enquire, whether the Legislature can deprive the citizens of their constitutional right, the trial by jury.

WHEN

WHEN mankind entered into a state of civil society, they surrendered a part of their natural rights into the hands of the community, that they might enjoy the remainder with greater security. The aggregate of this surrender forms the power of government; the first and greatest exercise of which constitutes legislation, or the power of making laws. Consequently the Legislature cannot intermeddle with the retained rights of the people.

IN the infant state of society, when the community consisted of but few members, when their wants and desires were circumscribed within narrow bounds, the power of making laws was exercised by all the people assembled for that purpose, or at least by the heads of families, who derived from nature a temporary authority over their offspring. Whatever was necessary for the good or safety of the whole was agreed to, and each individual engaged to abide by the opinion of the majority. Such was the situation of our ancestors, when they first settled in this country.

As society increased in numbers and wealth, as their settlements were extended, and their views enlarged, it became necessary to delegate the powers of legislation, and vest them in one person, in a few, or in many, as the community deemed most conducive to their common advantage. Such was the situation of our ancestors, when they petitioned to King Charles II. to be incorporated into a company, with the power of governing themselves. First by making of laws in a General Assembly, to be convened twice in each year, composed of magistrates elected annually by the freemen at large, and of deputies chosen semi-annually from the respective towns as their representatives. And secondly, by carrying those laws into execution, by judiciary establishments.

THE powers of legislation, in every possible instance, are derived from the people at large, are altogether fiduciary, and subordinate to the association by which they are formed. Were there no bounds to limit and circumscribe the Legislature; were they to be actuated by their own will, independent of the fundamental rules of the community, the government would be a

government

government of men, and not of laws. And whenever the legislators depart from their original engagements, and attempt to make laws derogatory to the general principles they were bound to support, they become tyrants. “ * For since it can never be supposed, as Mr. Locke well observes, to be the will of the society, that the Legislative should have a power to destroy that which every one designs to secure, by entering into society, and for which the people submitted themselves to legislators of their own making, whenever the legislators endeavour to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people.” And again †, “ when the legislators act contrary to the end for which they were constituted, those who are guilty, are guilty of rebellion.”

THE powers of our Legislature are so clearly defined in the Charter, which is conclusive evidence of the compact of the people, as well as of the royal intention, that a recurrence to them will greatly assist us in the present question. Let us attend therefore to the following passage: “ And that they (the General Assembly) or the greatest part of them then present, whereof the Governor or Deputy-Governor, and six of the Assistants, at least to be seven, shall have, and have hereby, given and granted unto them, full power and authority, from time to time, and at all times hereafter, to make, ordain, constitute, or repeal such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet, for the good and welfare of the said Company, and for the government and ordering the lands and hereditaments herein after mentioned to be granted, and of the people that do, or at any time hereafter shall, inhabit or be within the same; so as such laws, ordinances and constitutions, so made, be not contrary and repugnant unto, but, as near as may be, agreeable to the laws of this our realm of England, considering the nature and constitution of the place and people there.”

* Locke on Gov. 392. † P. 393.

THIS grant, which was obtained in consequence of an association of all the people for that purpose, expressly limits the legislative powers ; and by invariable custom and usage they are still so confined, that they cannot make any laws repugnant to the general system of laws which governed the realm of England at the time of the grant. The revolution hath made no change in this respect, so as to abridge the people of the means of securing their lives, liberty and property : To preserve which they have ever considered the trial by jury the most effectual, as no trial

THERE are certain general principles that are equally binding in all governments, more especially those which define the nature and extent of legislation. I do not recollect of having ever observed them so clearly and elegantly described, as in a treatise written by M. de Vattel, upon the laws of nations and of nature. I shall introduce him, therefore, as he is translated, in his own words.

" * IN the act of association, in virtue of which a multitude of men form together a state or nation, each individual has entered into engagements with all, to procure the common welfare ; and all have entered into engagements with each individual to facilitate for him the means of supplying his necessities, and to protect and defend him. It is manifest that these reciprocal engagements can no otherwise be fulfilled, than by maintaining the political association. The entire nation is then obliged to maintain that association ; and as in its duration the preservation of the nation consists, it follows from thence that every nation is obliged to perform the duty of self-preservation."

" || THE constitution and its laws are the basis of the public tranquility, the firmest support of the public authority, and pledge of the liberty of the citizens. But this constitution is a vain phantom, and the best laws are useless, if they are not religiously observed. The nation ought then to watch very attentively, in order to render them equally respected by those who govern, and by the people destined to obey. To attack the

constitution,

constitution of the State, and to violate its laws, is a capital crime against society ; and if those guilty of it are invested with authority, they add to this crime a perfidious abuse of the power with which they are intrusted. The nation ought constantly to suppress these abuses with its utmost vigour and vigilance, as the importance of the case requires. It is very uncommon to see the laws and constitution of a State openly and boldly opposed ; It is against silent and slow attacks that a nation ought to be particularly on its guard." ¹²⁷

But here, the attack is open and bold ;—it comes with violence ;—it moves with huge gigantic strides, and threatens slavery or death !—

* A very important question here presents itself. It essentially belongs to the society to make laws, both in relation to the manner in which it desires to be governed, and to the conduct of the citizens. This is called the legislative power. The nation may entrust the exercise of it to the Prince, or to an Assembly ; or to that Assembly and the Prince jointly ; who have then a right of making new, and abrogating old laws. It is here demanded, whether, if their power extends so far as to the fundamental laws, they may change the constitution of the State ? The principles we have laid down lead us to decide this point with certainty, that the authority of these legislators does not extend so far ; and that they ought to consider the fundamental laws as sacred, if the nation has not, in very express terms, given them the power to change them. For the constitution of the State ought to be fixed ; and since that was first established by the nation, which afterwards trusted certain persons with the legislative power, the fundamental laws are excepted from their commission. It appears that the society had only resolved to make provision for the State's being always furnished with laws suited to particular conjunctures ; and gave the Legislature, for that purpose, the power of abrogating the ancient, civil and political laws that were not fundamental, and of making new ones ; but nothing leads us to think that it was willing to submit the con-

stitution

stitution itself to their pleasure. In short, these legislators derive their power from the constitution; how then can they change it, without destroying the foundation of their authority?"

Have the citizens of this State ever entrusted their legislators with the power of altering their constitution? — If they have, when and where was the solemn meeting of all the people for that purpose? — By what public instrument have they declared it, or in what part of their conduct have they betrayed such extravagance and folly? — For what have they contended through a long, painful and bloody war, but to secure inviolate, and transmit unassailed to posterity, the inestimable privileges they received from their forefathers? — Will they suffer the glorious prize of all their toils to be wrested from them, and lost forever, by the men of their own creating? — They who have snatched their liberty from the jaws of the British lion, amidst the thunders of contending nations, will they basely surrender it to the Administration of a year? — As soon may the great Michael kick the beast, and Lucifer riot in the spoils of angels!

CONSTITUTION! — we have none — Who dares to say that? — None but a British emissary, or a traitor to his country.

Are there any such amongst us? — The language hath been heard, and God forbid that they should continue.

If we have not a constitution, by what authority doth our General Assembly convene to make laws, and levy taxes? Their appointment by the freemen of the towns, excluding the idea of a pre-existing social compact, cannot separately give them power to make laws compulsory upon the other towns. They could only meet, in that case, to form a social compact between the people of the towns. But they do meet by the appointment of their respective towns, at such times and places, and in such numbers, as they have been accustomed to do from the beginning. When met, they make laws and levy taxes, and their constituents obey those laws, and pay their taxes. Consequently they meet, deliberate and enact, in virtue of a constitution, which, if they attempt to destroy, or in any manner infringe, they violate, and

trust reposed in them, and so their acts are not to be considered as laws, or binding upon the people.

BUT as the Legislative is the supreme power in government, who is to judge whether they have violated the constitutional rights of the people?—I answer, their supremacy (consisting in the power of making laws, agreeably to their appointment) is derived from the constitution, is subordinate to it, and therefore, whenever they attempt to enslave the people, and carry their attempts into execution, the people themselves will judge, as the only resort in the last stages of oppression. But when they proceed no farther than merely to enact what they may call laws, and refer those to the Judiciary Courts for determination, then, in discharge of the great trust reposed in them, and to prevent the horrors of a civil war, as in the present case, the Judges can, and we trust your Honours will, decide upon them.

In despotic countries, where the sovereign mandate issues from the throne surrounded by servile flatterers, sycophants and knaves, the Judge hath nothing more to do than execute. His office is altogether ministerial, being the passive tool of that lawless domination by which he was appointed. Properly speaking, the judiciary power cannot exist where political freedom is banished from the administration. For without a system of laws, defining and protecting the rights of the people, there can be no fixed principles or rules of decision. Hence it is, that wherever the distinct powers of government are united in one head, whether that head consists of one, or of many, the subjects groan under perpetual servitude.

I SAY of one or of many: For it is very immaterial by whom scourges, chains and tortures, are inflicted, provided we must submit to them. The studied and unheard of cruelties of a Dionysius, who violated every right of humanity in his tyranny over the Syracusians during the space of thirty-eight years, were not more horrid and execrable than the united barbarities of the Council of Thirty, established at Athens, who caused more citizens to be murdered in eight months of peace, than their enemies had destroyed in a thirty years war!

Nor am I capable of distinguishing between an established tyranny, and that government where the Legislative makes the law, and dictates to the Judges their adjudication. For in that case, were they to enact tyrannical laws, they would be sure to have them executed in a tyrannical manner. The servility of the Courts would render them totally subservient to the will of their masters, and the people must be enslaved, or fly to arms.

In civil as well as moral agency there is a freedom of the will necessarily exerted in forming the judgment. Without the exercise of this, we cannot be said to determine at all, but our actions are wholly passive; and so, in a moral sense, we could not be accountable, and in a civil point of view we should be deprived of all liberty.

Every being naturally endeavours its own preservation; and the more conformably its actions are to its nature, the nearer it approaches to perfection: But when its actions are impelled by external force, it is deprived of the means both of preservation and of perfection.

A NATION may be considered as a moral being, whose health and strength consist in the due proportion, nice adjustment and equal preservation, of all its parts: And when one branch of the government steps into the place of another, and usurps its functions, the health and the strength of the nation are impaired: And should the evil be continued, so as that the one be destroyed by the other, the nation itself would be in danger of dissolution.

Have the Judges a power to repeal, to amend, to alter laws, or to make new laws?—God forbid!—In that case they would become Legislators.—Have the Legislators power to direct the Judges how they shall determine upon the laws already made?—God forbid!—In that case they would become Judges.—The true distinction lies in this, that the Legislative have the incontrollable power of making laws not repugnant to the constitution:—The Judiciary have the sole power of judging of those laws, and are bound to execute them; but cannot admit any act of the Legislative as law, which is against the constitution.

The Judges are sworn "truly and impartially to execute the laws that now are or shall hereafter be made, according to the best of their skill and understanding." They are also sworn "to bear true allegiance and fidelity to this State of Rhode-Island and Providence Plantations, as a free, sovereign and independent State." But this became a State in order to support its fundamental, constitutional laws, against the encroachments of Great-Britain. The trial by jury, as hath been fully shewn, is a fundamental, a constitutional law, and therefore is binding upon the Judges by a double tie, the oath of allegiance, and the oath of office.

It is a rule in ethics, "that if two duties or obligations, both of which cannot be performed, urge us at the same time, we must omit the lesser, and embrace the greater."

LET the question then fairly be stated. The General Assembly have made a law, and directed the Judges to execute it by a mode of trial repugnant to the constitution. What are the Judges to resolve?—Did the nature of their jurisdiction admit of such a mode of trial at the times of their appointment and taking the oath of office?—Surely it did not. The act of Assembly then erects a new office, the exercise of which, other things equal, they may undertake, or refuse, at their own option. There is no duty, no obligation in the way. In refusing, they incur no penalty; nor can their so doing work a forfeiture of their offices as Judges of the Supreme Judiciary Court. But when it is considered that the exercise of this office would be acting contrary to their oath of allegiance, and the oath of office, they are bound to reject it, unless the General Assembly have power to absolve them from these oaths, and compel them to accept of any appointment they may be pleased to make.

I HAVE heard some gentlemen speak of the laws of the General Assembly.—I know of no such laws, distinct from the laws of the State. The idea is dangerous; it borders upon treason!—
"tis rank—it smells to heaven!"—
Shakespeare.

Laws

Laws are *made* by the General Assembly under the powers, they derive from the constitution, but when made they become the laws of the land, and as such the Court is sworn to execute them. But if the General Assembly attempt to make laws contrary hereunto, the Court cannot receive them as laws; they cannot submit to them. If they should, let me speak it with reverence, they would incur the guilt of a double perjury.

THE life, liberty and property of the citizens are secured by the general law of the State. We will then suppose (as the very nature of the argument allows us to view the subject in every possible light) that the General Assembly should pass an act directing that no citizen should leave his house, nor suffer any of his family to move out of the same, for the space of six months, upon the pain of death. This would be contrary to the laws of nature.—Suppose they should enact that every parent should destroy his first-born child. This would be contrary to the laws of God.—But, upon the common principles, the Court would be as much bound to execute these acts as any others. For if they can determine upon any act, that it is not law, and so reject it, they must necessarily have the power of determining *what* acts are laws, and so on the contrary. There is no middle line. The Legislative hath power to go all lengths, or not to overleap the bounds of its appointment at all. So it is with the Judiciary; it must reject all acts of the Legislative that are contrary to the trust reposed in them by the people, or it must adopt all.

BUT the Judges, and all others, are bound by the laws of nature in preference to any human laws, because they were ordained by God himself anterior to any civil or political institutions. They are bound, in like manner, by the principles of the constitution in preference to any acts of the General Assembly, because they were ordained by the people anterior to and created the powers of the General Assembly.

THIS mode of reasoning will equally apply in law as in philosophy. For wherever there is a given force applied to put a body in motion, that motion will continue until the body is opposed by an

an equal or a greater force. And the Judges being sworn to execute the fundamental laws, they must continue to execute them until they shall be controuled by laws of a superior nature. But that can never happen until all the people assemble for the purpose of making a new constitution. And indeed I very much doubt if the citizens of any one State have power to adopt such a kind of government, as to exclude the trial by jury, consistently with the principles of the confederation.

It having been shewn that this Court possesses all the powers in this State, that the Courts of King's Bench, Common Pleas, and Exchequer, possess in England, let us turn to the authorities, and observe the adjudications of those Courts in similar cases.

* Judge Blackstone informs us, that "acts of Parliament that are impossible to be performed, and if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void." The same author having previously observed, that "the Judges are the depository of the laws; the living oracles, who must decide in all cases of doubt, and who are bound by oath to decide according to the law of the land."

In Bacon's abridgment we read, † "if a statute be against common right or reason, or repugnant, or impossible to be performed, the common law shall controul it, and adjudge it to be void."

HERE permit me, may it please your Honours, to apply the authority to the act, and see how exactly it corresponds.

Is it consistent with common right or reason, that any man shall be compelled to receive paper, when he hath contracted to receive silver?—That for bread he shall receive a stone, or for fish a serpent?—Is it consistent with common right or reason that he shall receive the paper dollar for dollar with silver, when it is fully known that the discount in general is from three to four for one, among those who receive the paper at all, and that there are very many

* 2 Blac. Com. 91.

† 4 Vol. 625.

many who totally refuse it?—That he should be called from his business, and subjected to a fine for his refusal, when there is not a man in the State, but upon principles of justice to himself and family would have done the same?—Is it right or reasonable that for such refusal he should be called to trial in a summary manner, in three days, and that no escoin, protection, privilege or injunction, shall be in anywise prayed, granted or allowed?—Suppose him to be confined to his bed by sickness, is he to be passed upon *ex parte*?—No man is to be injured by the act of God, or by the act of the law.—Suppose his witnesses are sick or absent, and cannot be procured by the time, he is not allowed even to pray for an indulgence; or if he should pray ever so fervently, he cannot be heard.—Suppose him to be summoned to attend at two, or at all the counties at the same time, upon different informations, he is still to be condemned unheard.—Even suppose him to stand in need of professional assistance, but that he cannot obtain at the moment, the gentlemen of the law being all necessarily attending upon a special session of the General Assembly, is he to be deprived of council?

“**REPUGNANT**, or impossible to be performed.” Is not the act repugnant when it authorizes the Judges to “proceed to trial without any jury, according to the laws of the land?” The laws of the land constitute the jurors the triers of facts, and the Judges the triers of law only, according to the known maxim, “*ad questionem juris respondent judices, ad questionem facti respondent juratores.*” How is it possible then that the Judges should try, without jury, and they are directed as well as authorized so to do, “the said Court shall proceed,” and at the same time according to the laws of the land, when those laws direct “that no man, of what estate and condition soever, shall be molested, without being, for it, brought to answer by due course of law, nor passed upon nor condemned, but by the lawful judgment of his peers?” Can contraries exist, and be executed at the same time?—This act therefore is impossible to be executed.

HERE is a new office indeed!—And were your Honours to suffer the special jurisdictions to attempt to carry the act into effect, what inconceivable mischiefs would ensue?—Is there a member
TUE

of the Administration, or any other, that will sell his beef, his pork, his corn, or his clothe, so as to enable the retailers and huxters to sell those articles again for paper, at the same rate they could be afforded for silver or gold? There is not. What's the consequence?—Every evil minded person in the State is invited by law to turn informer (a most despicable office) and more than five hundred prosecutions would take place in the course of a week!—Horrid reflection!—The idle, the profligate, the abandoned of every character, would appear in the group of prosecutors or witnesses, urged and pushed on by petty Conventions and designing Juntos, till perjury would run down our streets like a stream, and violence like a mighty river!—The Judges themselves might be tempted, by the perquisites of office, to encourage informations, until every man of industry, of business, and of property, must quit the State, retire from business, give up his property, or join in an opposition of force!—The temptation is great, and seriously alarming! For to secure the Judges individually, and their personal influence, the very emitting act directs that they shall receive all monies tendered and refused for past contracts, and at the expiration of three months deposite them in the General Treasury. What room for speculation, what inducement to corruption, what incentives to depreciate the currency!

Oh! it is an abominable act! Yet some there are, and, to our shame be it spoken, too many, who tend it, who nurse it, who hug it to their bosom as a darling child. But let me tell them it is a spurious offspring, conceived by an unlawful Convention, and brought forth by _____ at an unguarded hour! 'Tis a monster! and, as the immortal Pope expresses it upon another occasion,

*It is a monster of so frightful meane,
As to be hated, needs but to be seen;
Yet seen too oft, familiar with her face,
We first endure, then pity, then embrase!*

Let us see it therefore but once! Let us confine in Uye Judges, to its fate! Death is in its constitution, and are the

But

But to return, for I must confess the digression is not particularly directed to the point more immediately in question:

We again read in Bacon's Abridgment, that,* "the power of construing a statute is in the Judges; for they have authority over all laws, more especially over statutes, to mould them according to reason and convenience to the best and truest use!"

Here the author refers to Hobart, Plowden, and Lord Coke, who fully justify the doctrine he advances. They are upon the table, and will be produced, if your Honours require it; but we presume it would be only trespassing upon your patience, too much exhausted already, by a tedious discussion.

THE satisfaction you are pleased to express upon this head, enables us to pursue the subject in another point of view. Perhaps there is not a civilized country on earth, where so small a portion of natural liberty is given into the stock of political society, as by the people of this State. There is a certain period in every year when the powers of government seem to expire; for the authority of the old officers ceases with the appointment of the new, and these cannot act until they are commissioned and sworn. The Legislative of one House being composed of new members, or members newly elected twice in the year, feels and carries into effect the sentiments of the people, founded upon the extremes of liberty. The electors in the respective towns have generally some point to obtain; or, which is more unfriendly to public liberty, they are divided by parties, and so the members elected become the advocates of local, interested measures, without comparing them with the more extensive objects of the community. The sessions seldom exceed the limits of a week: New laws are proposed, acted upon and adopted, according to the first or the preconcerted impressions of passion, without time for deliberation or reflection. The Upper House, it is true, hath a negative upon the House of Deputies; but they never persist in exercising it without endangering their next election. The appointment of the Judges, Justices of the Peace, and other

other officers of government, being made by the members of both Houses in a Grand Committee, is very often the result of political arrangements; and more attention is paid to the carrying of certain points, than to the qualification of the candidates; so that the people feel no great restraint from this quarter.

WHAT is there then, in the nature of our government, to prevent anarchy and confusion on the one hand, or tyranny and oppression on the other?—Before the revolution, the King, as Supreme Executive, formed the balance; but since, the Executive Power hath become blended with the Legislative, and we have not, like the other States in the union, adopted any substitute for this defect.

THE moment therefore that this Court feels itself dependent upon the Legislature, in the exercise of its judiciary powers, there will be an end of political liberty: For there is not an individual of mankind but wishes, if possible, to be exempt from the compacts that bind others. And there may be conjunctures in which the love of natural liberty will bid defiance to the restraints of law, if the Legislature are blindly guided by the general impulse. Or should these attachments be more strongly fixed to the interests of a few designing men than to the public wish, tyranny would spring out of anarchy. In either case, the interposition of the Judiciary may save the constitution, at least for a time; and, by averting the immediate evil, will give scope for reflection, and so prevent a dissolution of government.

IT is extremely to be regretted, that this Court is not as independent in the tenure by which the Judges hold their commissions, as they are in the exercise of their judicial proceedings. The frequent changes that arise from annual appointments may have an influence upon legal decisions, and so destroy that uniformity which is essentially requisite to the security of individuals. But from these considerations we have nothing to fear upon the present occasion: For the knowledge, the integrity, the firmness of the Bench, will rise superior to every obstacle; and the

the dignity of their determinations will display a lustre awful even to tyranny itself! To this Honourable Court the warmest thanks of the defendant, of this assembly, of every citizen, are due, for their solicitous attention to their unalienable rights! Their expectations, their joyous hopes, await your determination; and we all pray to heaven, that before to-morrow's sun shall deck the western sky, our hopes may wanton in complete enjoyment!

*Then ev'ry generous breast shall glow with purest flame
Of gratitude; and fathers, anxious for the public good,
Relate the glorious deed to their attentive sons,
Who'll venerate the names of those immortal Five,
Who nobly dar'd to save our dying laws!*

May it please your Honours,

I CANNOT further pursue the subject, but must come to a conclusion.

We have attempted to shew, that the act, upon which the information is founded, hath expired:—That by the act special jurisdictions are erected, incontrouable by the Supreme Judiciary Court of the State:—And that, by the act, this Court is not authorized or empowered to impannel a jury to try the facts contained in the information:—That the trial by jury is a fundamental, a constitutional right—ever claimed as such—ever ratified as such—ever held most dear and sacred:—That the Legislative derives all its authority from the constitution—hath no power of making laws but in subordination to it—cannot infringe or violate it:—That therefore the act is unconstitutional and void:—That this Court hath power to judge and determine what acts of the General Assembly are agreeable to the constitution; and, on the contrary, that this Court is under the most solemn obligations to execute the laws of the land, and therefore cannot, will not, consider this act as a law of the land.

Oh! ye Judges, what a godlike pleasure must you now feel in having the power, the legal power, of stopping the torrent of

lawless sway, and securing to the people their inestimable rights!

—Rest, ye venerable shades of our pious ancestors! our inheritance is yet secure! — Be at peace, ye blessed spirits of our valiant countrymen, whose blood hath just streamed at our sides, to save a sinking land! —

WHEN the tear is scarcely wiped from the virgin's eye, lamenting an affectionate father, a beloved brother, or a more tender friend!—While the matron still mourns, and the widow bewails her only hope!—While the fathers of their country, superior to the ills of slaughter, are completing the mighty fabric of our freedom and independence, shall the decision of a moment rob us of our birthright, and blast forever our noblest prospects?—Forbid it, thou GREAT LEGISLATOR OF THE UNIVERSE!—No!

"The stars shall fade away,
The sun himself grow dim with age;
And nature sink in years;

But thou (fair liberty) thou shalt flourish in immortal youth,
Unbent amidst the war of elements, the wreck of matter, and the crush of worlds! —

On 1st Dec 1862, the Legislature passed a bill to prohibit the sale of slaves in the State of California.

CERTAIN CONSTITUTIONAL LAW OF PENNSYLVANIA

business very s hi videntia, sit o flaminis sibib, es, sit
xu to this wou aw to hold w n, Shmollib carodis, bne oldies

The C A S E of the J U D G E S.

shored 915W areant ordi flamin w n, benvisido w n
ni dits or fuds noqu puds o boziflido on right. Shmollib
faisib, rids to andies sib-robun o to, nofollings! To eisem

THE consequences of the foregoing determination were immediately felt. The shops and stores were generally opened, and business assumed a cheerful aspect. Few were the exceptions to a general congratulation, and lavish indeed were the praises bestowed upon the Court. The dread and the idea of informations were banished together, while a most perfect confidence was placed in judicial security. The paper currency obtained a more extensive circulation, as every one found himself at liberty to receive or refuse it. The markets, which had been illly supplied, were now amply furnished, and the spirit of industry was generally diffused. Every prospect teemed with returning happiness, and nothing appeared wanting to restore union and harmony among the contending parties.

THE demon however of discord was not entirely subdued; for upon the next succeeding week a summons was issued from both Houses of Assembly, requiring an immediate attendance of the Judges, "to render their reasons for adjudging an act of the General Assembly unconstitutional, and so void." Three of the Judges attended, the other two being unwell. This circumstance induced the Assembly to dismiss them at that time, but they were directed to appear at the October session next following.

ACCORDINGLY three of the Judges attended, and gave notice in writing to both Houses, "that they waited their pleasure." They were informed that the Assembly was ready to hear them, and would proceed immediately upon the business for which they were in attendance.

CERTAIN

CERTAIN ceremonies being adjusted, and the records of the Court produced, the Honourable Mr. Howell, the youngest Justice, addressed himself to the Assembly in a very learned, sensible and elaborate discourse, in which he was upwards of six hours upon the floor.

He observed, that the order by which the Judges were before the House might be considered as calling upon them to assist in matters of legislation, or to render the reasons of their judicial determinatian, as being accountable to the Legislature for their judgment.

THAT in the former point of view, the Court was ever ready, as constituting the legal counsellors of the State, to render every kind of assistance to the Legislative, in framing new, or repealing former laws: But that for the reasons of their judgment upon any question judicially before them, they were accountable only to God, and their own consciences.

UNDER the first head, the honourable gentleman pointed out the objectionable parts of the act upon which the information was founded, and most clearly demonstrated, by a variety of conclusive arguments, that it was unconstitutional, had not the force of a law, and could not be executed. His arguments were enforced by many authorities of the first eminence, in addition to those produced upon the trial. But as this part of the subject hath in a great measure been anticipated, we shall not enter into a further detail, concluding that the legal defence of the Court, in shewing "that they were not accountable to the Legislature for the reasons of their judgment," will be more interesting to the public.

HERE it was observed, that the Legislature had assumed a fact, in their summons to the Judges, which was not justified or warranted by the records. The plea of the defendant, in a matter of mere surplussage, mentions the act of the General Assembly as "unconstitutional, and so void;" but the judgment of the Court simply is, "that the information is not cognizable before them."

them." Hence it appears that the plea hath been mistaken for the judgment.

WHATEVER might have been the opinion of the Judges, they spoke by their records, which admitted of no addition or diminution. They might have been influenced respectively by different reasons, as the whole act was judicially before them, of which, it being general, they could judge by inspection, without confining themselves to the particular points stated in the plea. It would be out of the power, therefore, of the General Assembly to determine upon the propriety of the Court's judgment, without a particular explanation. If this could be required in one instance, it might in all; and so the Legislative would become the Supreme Judiciary. A perversion of power totally subversive of civil liberty!

If it be conceded, that the equal distribution of justice is as requisite to answer the purposes of government as the enacting of salutary laws, it is evident that the Judiciary Power should be as independent as the Legislative. And consequently the Judges cannot be answerable for their opinion, unless charged with criminality.

THE nature of their office obliges them to decide upon every question that can arise in legal process. If they are not directed by their own understanding, uninfluenced by the opinion of others, how can they be said to judge at all?—The very act of judging, supposes an assent of the mind to the truth or falsehood of a proposition. And if a decision is given contrary to this assent, the Judge is guilty of perjury, and ought to be rendered infamous.

EVERY man is excusable for errors of the head, provided sufficient attention hath been paid to the means of information: But no man is excusable for pravity or corruption of the heart.

THE Judges may err: For error is the lot of humanity. Perfection cannot be required of imperfect beings. But the very idea of being accountable to the Legislature, in matters of opinion,

nion, supposes the Legislature to possess the standard of perfection. A thought highly derogatory to the attributes of Deity!

THE Judge referred to several authorities, among which are the following:

BARON Montesquieu, in his Spirit of Laws, observes, “* There is no liberty, if the Judiciary Power be not separated from the Legislative and Executive. Were it joined with the Legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the Judge would then be the Legislator. Were it joined to the Executive Power, the Judge might behave with violence and oppression.

“ THERE would be an end to every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

JUDGE Blackstone in his Commentaries hath adopted the same ideas.—Serjeant Hawkins is precise and conclusive, † “ that no such Judge is in any way punishable for a mere error of judgment.”

‡ “ AND as the law has exempted jurors from the danger of incurring any punishment in respect of their verdict in criminal causes, it hath also freed the Judges of all Courts of Record from all prosecutions whatsoever, except in the Parliament, for any thing done by them openly in such Courts as Judges: For the authority of a government cannot be maintained, unless the greatest credit be given to those who are so highly intrusted with the administration of public justice: And it would be impossible for them to keep up in the people that veneration of their persons, and submission to their judgments, without which it is impossible to execute the laws with vigour and success, if they should be continually exposed to the prosecutions of those whose partiality to

* Vol. I, p. 222. † 2 H.P.C. c. 1, sect. 17. ‡ 1 H.P.C. c. 72, sect. 6.

their own causes would induce them to think themselves injured. Yet if a Judge will so far forget the dignity and honour of his post, as to turn solicitor in a cause which he is to judge, and privately and extrajudicially tamper with witnesses, or labour jurors, he hath no reason to complain, if he be dealt with according to the same capacity to which he so basely degrades himself." —

COMPARING these passages together, the intention of the author is apparent, that, in the first place, the Judges are not answerable at all for mere error of judgment; and in the second, they are triable only in Parliament for matters of a criminal nature.

THE same point is fully asserted in Bacon: * " But though they are to judge according to the settled and established rules and ancient customs of the nation, approved for many successions of ages, yet are they freed from all prosecutions for any thing done by them in Court, which appears to have been an error of their judgment."

So tender and delicate is the law in this respect, that even Justices of the Peace are scarcely guarded from every kind of prosecution upon account of their opinion.

UPON the 10th of May, 1757, a motion was made in the King's Bench † " for an information against two Justices of the Peace, for arbitrarily, obstinately and unreasonably refusing to grant a licence to one Henry Day, to keep an inn at Eversley; where it was alledged and sworn to be fit and proper; and even necessary, that there should be an additional one (there being one there already) and for which occupation of keeping an inn this man was (as those two Justices themselves had allowed on a former occasion) a proper person, they having before licenced him to do so at another place.

|| " LORD Mansfield, and Mr. Justice Denison, held, that notwithstanding this was a matter left in a great measure to the discretion of the Justices, yet if it appeared to the Court, from suf-

G

ficient

* Bacon's Abr. 555.

† Burrows. 556.

|| 556.

ficient circumstances laid before them, that their conduct was influenced by partial, corrupt or arbitrary views, instead of exercising a fair and candid discretion, the Court might call upon them to shew the reasons whereby they guided their discretion."

¶ " THE Justices thus intrusted have a right to judge for themselves: No man can judge for another. And this power is trusted to them by the constitution, by the Legislature."

† " It may be very dangerous to them to be obliged to give their reasons publicly: Though they may have very sufficient ones to satisfy their own minds, and to direct their own judgments."

‡ " AND if they are thus intrusted, why are they liable to be called to an account by any other jurisdiction, unless they act faultily and wilfully wrong? Indeed, if they do wilfully wrong, let them be punished: But where they act quite conscientiously, they are not accountable to any body."

¶ " BUT if it clearly appear that the Justices have been partially, maliciously or corruptly influenced in the exercise of this discretion, and have (consequently) abused the trust reposed in them, they are liable to prosecution by indictment or information, or even, possibly, by action, if the malice be very gross and injurious."

¶ " If their judgment is wrong, yet their heart and intention pure, God forbid that they should be punished! And he declared that he should always lean towards favouring them, unless partiality, corruption or malice, should clearly appear."

JUDGE Tillinghast observed, that nothing could have induced the gentlemen of the Court to accept the office to which they were appointed, but a regard to the public good: That their perquisites were trifling, and their salaries not worth mentioning. The only recompence they expected, or could receive, was a consciousness

of rectitude, which had supported them, and he was confident would support them, through every change of circumstances: That melancholy indeed would be the condition of the citizens, if the Supreme Judiciary of the State was liable to reprobation, whenever the caprice or the resentment of a few leading men should direct a public enquiry! —

THAT, as one member of the Court, he felt himself perfectly independent, while moving in the circle of his duty:—And however he might be affected for the honour of the State, he was wholly indifferent about any consequences that might possibly respect himself.

THAT the opinion he had given resulted from mature reflection, and the clearest conviction:—That his conscience testified to the purity of his intentions, and he was happy in the persuasion, that his conduct met the approbation of his God!

Judge Hazard.

My brethren have so fully declared my sentiments upon this occasion, that I have nothing to add by way of argument. It gives me pain that the conduct of the Court seems to have met the displeasure of the Administration. But their obligations were of too sacred a nature for them to aim at pleasing but in the line of their duty.

It is well known that my sentiments have fully accorded with the general system of the Legislature in emitting the paper currency: But I never did, I never will, depart from the character of an honest man, to support any measures, however agreeable in themselves.—If there could have been a prepossession in my mind, it must have been in favour of the act of the General Assembly; but it was not possible to resist the force of conviction. The opinion I gave upon the trial was dictated by the energy of truth: I thought it right—I still think so. Be it as it may, we derived our understanding from the Almighty, and to him only are we accountable for our judgment.

To the observations of the Judges, succeeded a very serious and interesting debate among the members, wherein many arguments and observations were adduced on both sides. At length a question was taken, " whether the Assembly was satisfied with the reasons given by the Judges in support of their judgment?" — It was determined in the negative.

A motion was then made, and seconded, " for dismissing the Judges from their office."

This was coming to the point, for the obtaining of which the greatest exertions had been made. Candidates were upon the spot ready to fill the seats thus to be made vacant, whom a confidence of success had rendered very important.

Upon a question of so unprecedented and so interesting a nature, many of the leading gentlemen of the Administration seemed almost ready to yield the ground upon which they had contended. — Some were for displacing the Judges at all events; some were for saving appearances by drawing out a concession on the part of the Court, and others were determined fully to justify them, when the following memorial was presented, which gave a new turn to the deliberations. —

To his Excellency the Governor, and his Honour the Speaker of the Lower House of Assembly: To be communicated to both Houses.

THE underwritten, appointed Justices of the Superior Court, &c. at the annual election in May last, for the term of the current year, and cited to appear before the General Assembly at their present session, by an order therefor, passed at their last session, specially convened in the city of Newport, " to render the reasons of a certain judgment given by said Court, at the last term thereof in the county of Newport," having appeared before both Houses in a Grand Committee, and made full communication of all the proceedings of the Court, relative to the case in which said judgment was rendered; and having entered into a full and free examination of the several parts and principles of the penal law

in question, and compared them with the constitution, or fundamental laws of the State, and all other laws operating thereon, which secure to the citizens thereof their rights and privileges; and having established their observations thereon by many the most approved authorities in law, as well as by the constitution and doings of the federal union, and the members thereof, since the revolution in this country—

F O R the advice and assistance of the General Assembly in point of legislation—concluded, by utterly denying the power of the Legislature to call upon them.—

F O R the particular reasons of their judgment in that, or any other case; and declining to render the same—alleging and maintaining, by arguments and authorities of law, that for the same they are “accountable only to God (under the solemnities of their oath of office) and to their own consciences!”

AND while, to remove misapprehensions, they disclaim and totally disavow any the least power or authority, or the appearance thereof, to contravene or controul the constitutional laws of the State, or acts of the General Assembly—they conceive that the entire power of construing and judging of the same, in the last resort, is vested solely in the Supreme Judiciary of the State.

AND whereas in the citation aforesaid no charge is contained against the underwritten, in their aforesaid capacity, nor had they reason to apprehend any proceedings were to be grounded thereon, to affect their lives, liberties or property, or their estate in their office aforesaid, or their good name and character, as officers of this State :—

AND whereas, from appearances, there is reason to apprehend that a design is formed, and ripening for execution, by a summary vote of the Legislature, either to dismiss them from their aforesaid office, or to suspend them from the power of exercising the same:

WHEREFORE,

WHEREFORE, they pray that they may have a hearing by counsel before some proper and *legal tribunal*, and an opportunity to answer to *certain and specific charges*, if any such can be brought against them, before any sentence or judgment be passed injurious to any of their aforesaid rights and privileges.—And

THIS they claim and demand as freemen, and officers of this State; and, at the same time, with deference, utterly protest against the exercise of any power in the Legislature, by a summary vote, to deprive them of their right to exercise the functions of their aforesaid office, without the aforesaid due process of law, or a commencement thereof (in which latter case a suspension only from the duties of office can take place) before the full term for which they were appointed and engaged, under the constitution of the State, shall be completed: And more especially upon *a mere suggestion of a mere error of judgment*.—

JOSEPH HAZARD,
THOMAS TILLINGHAST,
DAVID HOWELL.

State of Rhode-Island, &c. Providence, Nov. 4, 1786.

THIS memorial being received, the Judges informed the Assembly, that they had directed counsel to enforce its contents, and requested an hearing accordingly. Whereupon the author, having addressed the House in the usual manner, observed,

THAT the necessity of exhibiting the memorial upon the table, arose from the motion last made by one of their honourable members, for dismissing the Judges from office, without any previous charge of criminality. A measure so novel as this motion tended to produce, could not have been foreseen or expected; and therefore it would not be thought strange if the counsel was not fully prepared to meet and oppose it.

WHAT do the Judges pray for?—That if they are to be passed upon for any thing respecting their duty, they may first know for what offence they are to be judged: That the particular charge or charges may be specified: That they may have time for defence: That

That they may be heard before a tribunal legally constituted; and that they be heard by counsel.—

Is there a gentleman in this Assembly so inattentive to the rights of his constituents, as to refuse, upon this occasion, what the lowest peasant, nay the vilest criminal, is entitled to receive?—I presume there is not. And notwithstanding many of them may suppose that the honour of the Legislature is wounded by the decision of the Court, and so would wish to restore it, even by sacrificing the Judges; yet I am confident they will not incur the imputation of real disgrace, by removing the barriers to personal security, and the preservation of property. For if they would preserve in the minds of the citizens an attachment to their measures, and a veneration for their laws, they certainly will not openly violate the laws themselves.

Be pleased to recollect a paragraph in our Declaration of Rights, our Magna Charta, wherein it is provided, "that no man, of what estate and condition soever, shall be put out of his lands and tenements, nor taken, nor imprisoned, nor dispossessed, nor banished, nor any ways destroyed, nor molested, without being for it brought to answer by due course of law."

Was it in the power of the General Assembly to nullify this part of our constitution (which we utterly deny) they have not done it. The right is still guarded by all the solemnities of law, and therefore the honourable remonstrants claim and demand its benefits. This they do, from your Honours, not as a Legislative, but as acting in a judicial capacity. For the passing of sentence is the exercising a judiciary power, grounded upon a pre-existing law. You are bound then by that oath, to which you all submitted as a necessary qualification, previously to your becoming members; and which is in these words: "And you do farther engage equal right and justice to do to all persons that shall appeal unto you for your judgment in their respective cases."

It is perfectly immaterial upon the present argument, whether the judgment of the Court was right or wrong; whether it was agreeably

agreeably to law, or against law. The only question is, whether they can, in any respect, be brought to answer for it, *but by due course of law?* And consequently, whether they can be passed upon and condemned, until they be proved guilty of a crime?

The tenure by which all commissions are held in this State, is for the space of one year. Consequently, during that term, every officer has an interest, a kind of estate, inseparably annexed to his appointment. To be divested of which, he must either neglect, misuse, or abuse his trust, so as to work a forfeiture. This neglect, misuse, and abuse, include questions of fact, which must appear, either by the confession of the party, or by proof, before the forfeiture can be declared. But how can the facts appear to be true or false, without an impartial and candid examination? And how can such examination take place until the facts or charges are particularly stated, and the party accused have an opportunity of making defence, in such way as he shall deem most beneficial to himself?—Suppose he should deny the facts, he must certainly be presumed innocent till the contrary appear. How shall the contrary appear, but by producing evidence, oral or written?—If oral, hath he not a right to cross-examine the witnesses, to disqualify them, or produce others to disprove their testimony, either by destroying their credibility, or proving some other proposition totally inconsistent with that asserted by them?—Or, if the evidence be written, hath he not a right to suggest and establish alteration, diminution, or even forgery itself?—In short, can there exist, in contemplation of law, the possibility of an accusation, that cannot be controverted, and proved to be groundless?

Did the Judges hold their commissions during the pleasure of the General Assembly, then indeed they might be removed without the formalities of a trial. But, even in that case, the exercise of so high a prerogative, without some kind of suggestion and proof, would be deemed injurious and oppressive. In the present case, however, wherein the Judges cannot be molested, but by being called to answer for some crime, *by due course of law*, there is not even a suggestion that they have intentionally departed

departed from the line of their duty. Then are they secured in their posts, during the term of their appointment, in as sacred a manner as the property of any individual is guarded against the encroachments of a rapacious neighbour.

THEY stand upon the firm ground of rectitude and independence. If any man hath any accusation to exhibit, let him come forth:—Let him produce the list of his charges;—they are willing to meet him. But they will meet him only upon *due and legal process*, and before a Court lawfully qualified to try them. Should no such accusation be made, what remains but that the Judges be immediately discharged from any farther attendance upon this Assembly?

SHOULD they be impeached, I pledge myself to shew, that they cannot be tried by this Honourable Assembly. But if a contrary sentiment should prevail, I must request time, till the next session, to be prepared with arguments and authorities, to establish a doctrine so important in its consequences. Permit me, however, for the present, to observe,

THAT in England the Judges are appointed by the King, as the Supreme Executive. Their commissions are *during good behaviour*; and therefore they are not triable by the King, but by the Parliament only, and *upon impeachment*. Were they to be tried by the King, who appoints them, their judgments might be influenced by his authority; and so the channels of justice would be corrupted. Besides, the King is the party accusing, and consequently cannot be the Judge. For the very act of complaining, presupposes an opinion that the party complained of is guilty. Hence it is that the Grand Jurors, who make presentment, are disqualified ultimately to decide upon the fact.

IN this State the Judges are appointed by both Houses of Assembly, in a Grand Committee. In this respect, they resemble the King; and therefore cannot try the Judges upon a criminal charge. In the present instance, both Houses of Assembly are the party complaining; in this respect also, they resemble

ble the King, and so cannot be the triers. For, with deference to the Legislators present, there may be an Assembly, whose interested views might induce them to establish systems totally subversive of the constitution, and of political as well as civil liberty. To effect which, the Supreme Judiciary must be the creatures of their power ; and such creatures they would finally be, were the Judges to be appointed, accused, and tried by them.

LET the human heart, and, as I have the honour of addressing myself to some who profess and even attempt to teach the doctrines of Christianity, the conscience also, be consulted upon this question !—Should not the parties litigant be equally indifferent to the Judge, who is to decide upon their controversy ?—Why is it that jurors may be challenged, and removed, for favour, but that the mind should be perfectly unbiaffed, and open to the reception of truth ?—Why, like Cæsar's wife, should they be incapable of being suspected, unless that the parties themselves might feel a perfect confidence in their Judges ?—Can that confidence be placed upon this occasion ?—Hath not the matter been taken up rather in a political than a juridical point of view ?—I do not assert ; but hath it not been determined, in a convention of part of the members, to remove the Judges, and appoint others who will execute, at all events, the penal acts ?—Hath not one town in particular proceeded so far, as to instruct its Deputies to use their utmost influence in bringing the Judges to punishment ?—Can these members be considered as impartial triers ?—Is it possible to suppose, but that the influence of their constituents will have some weight in forming their opinion ?—Can they be objected to, as having prejudged the cause ?—If they cannot, is there not a moral certainty of condemnation ? If they can, will not the objection be so far extended, as to prevent the possibility of a legal decision ?—

BE entreated therefore, O ye guardians and protectors of the people, seriously to reflect upon the magnitude of the present question, and the important events that may result from your determination !—“ The Great Judge of all the earth, can He do wrong ? ”—Of beings rational, *He* requires the “ *heart*.”—And

And, "as a man believeth in his *conscience*, so is he!"—Submit then to the heavenly standard! And, as the Judges have acquitted themselves *conscientiously*, in the sight of God and man, add to the general plaudit, which shall waft their names upon the wings of immortal fame, to the latest posterity!

The claim and demand of the Judges, as stated in their memorial, and enforced by their counsel, were followed by a concise, but rational debate, in which the fury of passion, excepting in one or two instances, surrendered to cool reflection, and prepared the way for vindicating the honour of the law, and the dignity of the State. In vain did any endeavour to recall the mind to a predetermined resolution! Truth, "which is lodged in a secret corner of the heart," exerted her gentle influence, while prejudice and malice retired abashed!

A MOTION was made by an honourable member, seconded, and agreed to, that the opinion of the Attorney-General be taken, and the sentiments of the other professional gentlemen requested, whether constitutionally, and agreeably to law, the General Assembly can suspend, or remove from office, the Judges of the Supreme Judiciary Court, without a previous charge and statement of criminality; due process, trial, and conviction thereon?

Mr. Channing, the Attorney-General, observed, that as it was at all times his duty, so he derived a peculiar pleasure in rendering to the Hon. the Legislature every legal assistance in his power.—That he attended the trial upon the information, without any bias or partiality upon his mind; and was happy in the conviction, that the whole conduct of the Judges, upon that interesting occasion, demonstrated the greatest candour and uprightness; and, according to his private opinion, their determination was conformable to the principles of constitutional law.—But, be their judgment agreeably to law or not, confident he was, that there would be a fatal interruption, if not annihilation to government, if they could be suspended, or removed from office, for a mere matter of opinion, without a charge of criminality.—How that charge should be preferred and conducted, he

did not presume to decide, as it might possibly be the subject matter of an after question, and was not contained in the present order.

THE Honourable Mr. Bradford informed the House, that he was not present at the trial in Newport, nor had he attended to the proceedings of the Legislature respecting the Judges, excepting so far as related to the citation, and the memorial upon the table:—That till then, he never doubted but the General Assembly were vested with constitutional authority to try and remove any officer by them appointed, for any mal-practices in his office; but that from the observations that had been made, he very much doubted the propriety of his former opinion:—That one point, however, was clear and certain, that as the Judges were commissioned and sworn for the term of a year, they could not be deprived of their powers during that term, but by regular impeachment, in which the charges against them must be particularly stated; trial, in which they would have an undoubted right for time to prepare their defence, and to be heard by counsel; and condemnation, upon full proofs of the charges:—That in the proceedings now before the House, there was not a charge, or the appearance of one, against the Court, to which they could, in any manner, be held to answer:—That he was really astonished, that so much time should be taken up in needless enquiries, and fruitless altercations!—That he had been honoured with a seat, in one or other of the Houses of the Assembly, for upwards of thirty years, and could not recollect a period, in which harmony and unanimity were more essentially wanting than at the present time:—That the people of this State had been well governed; that they had been an happy people, and might still be as happy as any on earth, if all party contentions could be laid aside, and every one strive to sooth the cares, and heal the wounds, of his neighbours!—He besought, he entreated the members to embrace the present moment, in which there seemed to be a spirit of conciliation, to put an end to all further contentions among themselves, but what might arise for the sake of information!—And, as they regarded the honour, the peace, and the safety of the State, that they would discharge the Judges from any farther attendance, and apply themselves

themselves in earnest, and with one mind, to such measures as would render them happy at home, and respectable abroad. —

MR. HELME remarked, that the subject was new, and he was not fully prepared to give an opinion.—But that, at present, he inclined to think, that there was no constitutional law by which the question could be solved:—That therefore it must be in the breast of the General Assembly to point out the mode of trial by an act for that purpose, should a trial be thought necessary:—That if they should proceed to try the Judges, either by themselves, or a Court to be specially appointed for that purpose, they must cause them first to be impeached, and state the facts particularly upon which the impeachment is founded:—That the common law will direct in the manner of process; and should they be found guilty, they cannot be removed from their office but by a bill, in nature of a bill of attainder, which must pass both Houses, and be enacted into a law.

MR. GOODWIN spoke with elegance, and fully acquiesced in the opinions already given, that no sentence could be passed against the Judges, but by regular process, in which a specification of the charges is essentially requisite.—He was diffusively eloquent, enlarged upon the subject, and concluded by observing, that he had given his sentiments without reserve, and had thought with freedom before he gave them.

THE two professional Gentlemen in the House, the Honourable Mr. Marchant, and Mr. Bourne, confirmed the sentiments of their brethren, in the leading points, by a masterly display of legal talents.—

THE only question remaining was, whether the Judges should be discharged from any further attendance upon the General Assembly, as no accusation appeared against them?—The question was put, and decided by a very great majority, “that as the Judges are not charged with any criminality in rendering the judgment, upon the information, Trevett against Weeden, they are therefore discharged from any further attendance upon this Assembly, on that account.”

an estuary being built or being one river has flooded in a relatively
flooded area before, caused by recent rains, caused by

APPENDIX.

THE following are the penal acts referred to in the preceding trial:

GENERAL ASSEMBLY, May Session, 1786.

WHEREAS from a variety of causes, political and mercantile, the currency of this State now in circulation has become altogether insufficient in point of quantity for the purposes of trade and commerce, and for paying the just debts of the inhabitants thereof: Therefore, to establish a circulating medium, upon the firmest and most equitable principles that may be, and for facilitating that interchange of property so essential to a commercial State, and a people circumstanced as are the inhabitants of this State: Be it Enacted by this General Assembly, and by the Authority thereof it is hereby Enacted, That One Hundred Thousand Pounds, lawful money, be forthwith emitted in bills of paper, and loaned on the credit of clear landed real estates, double the value of the said bills so loaned to be pledged in such real estates: That the aforesaid sum be apportioned to the city of Newport, and the several towns in this State, agreeable to the apportionment of the last State tax, and be delivered to two Trustees of the said city, and each of the said towns, who are to be chosen and appointed by this General Assembly, for the purpose of receiving and loaning out the said bills to the freeholders of the said city, and the said towns they shall represent: That each freeholder shall have and receive of the said Trustees, after the apportionment of the said sum, an equal part of such apportionment, he giving security agreeable to this act: And that the said sum of One Hundred Thousand Pounds be paid into the Grand Committee's Office, within and at the expiration of fourteen years from the time of emitting the same.

AND be it further Enacted by the Authority aforesaid, That Messieurs Elijah Cobb, of Portsmouth, Nehemiah Knight, of Cranston, Jonathan J. Hazard, of Charlestown, Job Comstock, of East-Greenwich, and Samuel Allen, of Barrington, be a Grand Committee for the purposes herein mentioned, who shall keep a public office in the said city of Newport; and all necessary expences of the said office shall be paid out of the General-Treasury of this State: That Thomas Rumreill, Esq; be appointed Keeper of the said Grand Committee's Office, to receive and safely to keep all the deeds, bonds, and other papers, that shall be given the Trustees of the said city and the said towns, by the individuals as aforesaid, for the money loaned as aforesaid. And that the following persons be appointed the said Trustees, to wit: Newport, Messieurs Thomas Freebody, and Nicholas Easton: Providence, Messieurs James Arnold, and George Olney: Portsmouth, Messieurs William Anthony, jun. and William Hall: Warwick, Messieurs Thomas Holden, and Othniel Gorton: Westerly, Messieurs Christopher Babcock, and Joseph Crandall: New-Shoreham, Messieurs John Sands, and Caleb Littlefield: North-Kingstown, Messieurs William Hammond, and George Thomas (Son of Samuel): South-Kingstown, Messieurs Stephen Hazard, and Samuel Potter: East-Greenwich,

Messieurs Joseph Fry, and Benjamin Tillinghast : Jamestown, Messieurs John Gardner, and Rowland Robinson : Smithfield, Messieurs John Sayles, and Andrew Waterman : Scituate, Messieurs Josiah Colwell, and John Harris : Gloucester, Messieurs John Smith, (Son of Benjamin) and Stephen Winsor : Charlestown, Messieurs Joseph Stanton, jun. and Benjamin Hoxsie, jun. West-Greenwich, Messieurs Thomas Joslin, and Gideon Waite : Coventry, Messieurs William Burlingame, and Jeremiah Fenn : Exeter, Messieurs George Pierce, and Joseph Reynolds, jun. Middletown, Messieurs Thomas Coggeshall, and John Gould : Bristol, Messieurs Nathaniel Fales, and Shearjashub Bourne : Tiverton, Messieurs Walter Cooke, and Abraham Barker : Little-Compton, Messieurs Nathaniel Searle, and Perez Richmond : Warren, Messieurs William T. Miller, and Daniel Cole : Cumberland, Messieurs John S. Dexter, and John Lapham : Richmond, Messieurs James Sheldon, and Thomas James : Cranston, Messieurs Stephen Knight, and Stephen Sprague : Hopkinton, Messieurs Abel Tanner, and Randall Wells : Johnston, Messieurs Abraham Belknap, and Andrew Harris : North-Providence, Messieurs Stephen Jenckes, and Hope Angell : Barrington, Messieurs Juhah Humphry, and Nathaniel Martin : Foster, Messieurs John Westcott, and Nehemiah Angell.

AND be it further Enacted by the Authority aforesaid, That the individuals of the said city, and the several towns of this State, who shall receive bills as aforesaid of the said Trustees, shall pay an interest of four per centum per annum, into the General-Treasury of this State, annually, for the term of seven years from their having received the said bills, and for the last seven years that no interest be paid : And that one seventh part of the aforesaid sum of One Hundred Thousand Pounds be paid into the Grand Committee's Office aforesaid, in seven equal annual payments, during the last seven years of the said fourteen years, and be consumed with fire.

AND be it further Enacted by the Authority aforesaid, That the said Elijah Cobb, Nehemiah Knight, Jonathan J. Hazard, Job Comstock, and Samuel Allen, be a Committee to sign, divide, and cause to be printed, the aforesaid sum of One Hundred Thousand Pounds, into bills of convenient sums and denominations, not to exceed Three Pounds, and not less than Sixpence ; and to make such checks and devices, for the preventing of altering and counterfeiting the same, as to them may seem meet : That three at least of the said Committee sign every bill of Twenty Shillings and upwards, and that two at least sign every bill of a less denomination : And that Messieurs William Borden, and Thomas Freebody, be and they are hereby appointed to superintend the press, at the printing of the said bills.

AND be it further Enacted by the Authority aforesaid, That the freeholders or individuals aforesaid, to receiving bills of the said Trustees, shall mortgage real estates in double the value of the bills so received (the said Trustees having no regard to the wood or timber growing on the land, but to the real land only) and also the said seven years interest arising upon the same, at the rate of four per centum per annum, as aforesaid, to the Keeper of the said Grand Committee's Office, for the use of the State ; and also shall give seven bonds for the principal sum of the said bills, in equal apportionments, and also seven bonds, in equal sums, for the interest arising upon the same in the term of seven years, as aforesaid, to the General-Treasurer, which last mentioned bonds shall be delivered by the said Trustees to the General-Treasurer of this State, for the recovery of the said annual interest.

AND be it further Enacted, That the said Trustees of the said city, and the several towns, and also the said Keeper of the aforesaid Grand Committee's Office, shall be duly engaged, before a Justice of the Superior Court, for the discharge of their trust, and shall give good and sufficient bonds to the General-Treasurer of this State, for the true and

and faithful discharge of their several trusts, in double the sum received by the said Trustees, and the said Keeper every year in double the sum, annually to be brought into the said Grand Committee's Office: And as the said Trustees shall carry in their proportion to the said Grand Committee's Office, they shall receive of the Keeper of the said office a certificate, which shall authorize the General-Treasurer to cancel the said Trustees' bonds, upon their producing the same.

AND be it further Enacted, That the bills so to be emitted shall be of the following form and tenor, to wit:

State of Rhode-Island, &c.

THIS bill is equal to in lawful silver money, and shall be received in all payments within this State, agreeable to an act passed by the General Assembly of said State, at their May sessions, holden at the city of Newport, A. D. 1786.

Death to counterfeit.

AND be it further Enacted by the Authority aforesaid, That the said bills when emitted shall be a good and lawful tender, for the complete payment and final discharge of all debts now due and contracted, and that may hereafter become due and be contracted, and for the final and full discharge of all fines and forfeitures, judgments and executions, now had, become due, and recovered, of every and any nature and kind whatsoever, within this State.

AND be it further Enacted by the Authority aforesaid, That if any creditor or creditor's, their lawful agent or attorney, shall refuse to receive any of the aforesaid bills, in discharge of any debt or demand, then and in that case it shall and may be lawful for the said debtor to make application to a Justice of the Superior Court of Judicature, &c. or to any Justice of the Inferior Court of Common Pleas, of the county wherein said debtor lies, or is resident; and the said Justice upon such application shall grant citation in the following manner, to wit:

State of Rhode-Island, &c.

To the Sheriff of the county of his Deputy, or to either of the Town or City Serjeants, or Constables, greeting.

CITE A. B. of, &c. (or his attorney, or agent, as the case may be) creditor to C. D. to appear before me the subscriber, one of the Justices of the Court at my dwelling-house, in ten days from the service hereof, to receive the sum of lawful money, lodged with me, by the said C. D. debtor to the said A. B. being the principal and interest due upon a note (bond, account, mortgage, judgment of Court, &c. as the case may be) upon the penalty of the law, in such case made and provided; and make true return of this citation, with your doings thereon, in three days from the date hereof.

WHICH citation is to be served by the officer personally upon the creditor, or his agent, or attorney, or in case of absence by leaving an attested copy of the same at the creditor's, his agent's or attorney's last and usual place of residence, or abode. And in case the said creditor, his agent, or attorney, after having had such notice, does not appear, agreeable to the said citation, the said Justice shall give a certificate expressing the lodging of the said money; and the said Judgment shall be deemed a sufficient tender for every purpose mentioned in this act, which said certificate shall be of the following tenor, to wit:

State

State of Rhode-Island, &c.

TO all whom it may concern.—Know ye, that C. D. of, &c. on the day of
at my dwelling-house at lodged with me the sum of pounds, lawful money,
being in full of the principal and interest of a sum of money due from the said C. D. to A. B.
of, &c. That the said C. D. hath in all respects complied with the law respecting the paper
currency; and that the said A. B. (or his agent, or attorney, as the case may be) hath been
legally and duly notified thereof.

AND if the said creditor, his agent, or attorney, does not apply for the said sum of money so tendered and lodged in the time aforesaid, the said Justice shall cause the said tender or lodgment to be notified and published in all the news-papers in this State for the term of three weeks, the expence of which publication, and all other expences of the said process, shall be defrayed out of the money so lodged: That the said certificate shall be a sufficient plea in bar to all and every action and actions that shall or may be brought for the recovery of money so lodged and tendered, and shall forever operate as a discharge and a *bona fide* payment of the said debt, in all and every Court and Courts having jurisdiction in this State: That the said Justice shall keep and have a fair record of all his acts and doings touching the premises, and shall have the same fees for his services as are now allowed by law for summoses, copies, &c. And that if the said creditor, his agent, or attorney, shall not within the space of the said three months call for or demand the said sum so tendered or lodged, the same shall be forever forfeit to and for the use of this State, and shall be paid by the said Justice into the General-Treasury accordingly.

AND be it further Enacted by the Authority aforesaid, That if any person shall counterfeit or alter any bill, with design to augment the value thereof, and be thereof legally convicted at the Superior Court of Judicature, Court of Assize, &c. in this State, he, she or they, so offending, shall suffer the pains of death, without benefit of clergy.

A true Copy:

HENRY WARD, Secretary.

State of RHODE-ISLAND, &c.

IN GENERAL ASSEMBLY, June Session, A.D. 1786.

An Act in Addition to and Amendment of an Act made and passed by the General Assembly of this State, at their last May Session at Newport, for emitting the Sum of One Hundred Thousand Pounds.

WHEREAS it is highly necessary, and of the last and most important consequence to the government of all States, that the proceedings of the Legislature be held in high estimation, and the most sacred regard; and that the law when promulgated be strictly adhered to, and punctually and most religiously obeyed.

And whereas it is of the greatest moment, that the aforesaid emission of One Hundred Thousand Pounds, which will have the greatest tendency of any thing within the wisdom of this Legislature to quiet the minds and to alleviate the distressed situation and circumstances of the good citizens of this State, should be kept in good credit; and that the same should be a currency equal in value to coined gold and silver: And whereas various attempts have been made by a certain class of men, who, from mistaken principles, suppose the said currency to be injurious to their interest, and from an inclina-

tion to render invalid such laws and regulations of this Assembly, as may not quadrate with their interest, judgment and opinion of things, and for many other causes, which, if permitted to exist, will support a power in this State counter to the authority chosen and appointed by the suffrages of the free people thereof, and subversive of those laws and principles upon which the happiness, welfare and safety, of the people depend.

**THEREFORE, Be it Enacted by this General Assembly, and by the Authority thereof it is
hereby Enacted, That any person or persons, who shall hereafter refuse to take the bills
of credit of the aforesaid emission of One Hundred Thousand Pounds, in exchange for
any article or articles, which he, she or they, may have for and expose to sale, agreeable
to and for the value mentioned on the face of the said bills, or shall, by making two
prices for his, her or their goods, a silver-money less than a paper-money price, or shall
make any difference in bartering or exchanging his, her or their goods, in affixing a
value to his, her or their goods, between the paper bills aforesaid, and the goods so to
be exchanged, or shall, by any overt act, or overt acts, of his, her or their own, or by
his, her or their directions, to any person or persons acting for or under him, her or them,
or to any person or persons over whom he, she or they, may have influence, or by any
ways, means or manner, whatsoever, or howsoever, tend to depreciate, discourage the
passing or discountenance the bills of credit aforesaid, or in any degree to lessen the true
value of the same, or by any ways or means whatsoever to invalidate, weaken or make
void the act aforesaid, for emitting the aforesaid One Hundred Thousand Pounds,
he, she or they, so offending, shall, upon due conviction thereof, for the first offence, be-
fore any Court of General Sessions of the Peace in this State, or the Superior Court of
Judicature, Court of Assize and General Gaol-Delivery, forfeit and pay the sum of One
Hundred Pounds, lawful money, one moiety of the same to and for the use of the person
who shall inform of and appear to prosecute the same, and the other moiety to be paid
into the General Treasury of this State: And whatsoever person or persons shall be
convicted, as aforesaid, of a second offence, as aforesaid, he or they so offending shall be
rendered incapable and unfit to elect, or to be elected, to any office of honour, trust or
profit, within this State; and also, he, she or they, so offending a second time, shall for-
feit and pay the sum of One Hundred Pounds, lawful money, to be recovered and appro-
priated as aforesaid.**

ORDERED, That this act be published in all the news-papers in this State.

3891. D. A. 1970-1971. June 8, 1971. *A true Copy* to A. J. ENNIS, JR.

Witness, am I. HENRY WARD, *Secretary.*

IN GENERAL ASSEMBLY, especially convened at the City of New-

*An Act, in Addition to and Amendment of an Act, entituled, "An Act in Addition to and Amendment of an Act, made and passed by this Assembly, at their Session holden at New-
port, in May last, for emitting the Sum of One Hundred Thousand Pounds, in Bills of
public Credit,"*

WHEREAS it is an established maxim in legislation, and ought to be strictly and most punctually adhered to in all wise governments, that process upon the breach of penal laws be immediate, and the penalty be inflicted or exacted directly consequent upon conviction; and that the usual and stated methods and times of holding Courts

Courts within this State are impracticable, inexpedient, and inapplicable to the true intent and meaning of the said act, and altogether insufficient to carry into effect the good purposes of this Legislature, touching the same.

THEREFORE, Be it Enacted by this General Assembly, and by the Authority thereof it is hereby Enacted, That the mode of procedure, and the method of law process, against any person or persons who shall be guilty of a breach of the aforesaid act, or any part thereof, so that such person or persons would thereby be subject to the penalty of the same, shall be as followeth, to wit: That the complainant shall apply to either of the Judges of the Superior Court of Judicature, &c. within this State, or to either of the Judges of the Inferior Court of Common Pleas, within the county where such offence shall be committed, and lodge his certain information, which shall be issued by the said Judge in the following form, to wit:

If. B E. it remembered, that A. B. of in the county of who, as well for the Governor and Company of the State of Rhode-Island and Providence Plantations as for himself, doth prosecute, cometh before me C. D. one of the Justices of the Court on the day of in the year of in his proper person; and, as well for the said Governor and Company as for himself, giveth me and the said Court to understand and be informed, that E. F. of in the county of on the day of in the year aforesaid, at aforesaid, in the county aforesaid, not regarding the laws and statutes of the said State, but the same intending to break, make void and annul, with force and arms (here insert the offence, with legal precision) against the form of the statute in that case made and provided. Whereupon the aforesaid A. B. as well for the said Governor and Company as for himself, prayeth the advice of the said Court in the premises; and that the aforesaid E. F. may forfeit the sum of according to the form of the statute aforesaid; and that he the same A. B. may have one moiety thereof, according to the form of the statute aforesaid; and also, that the aforesaid E. F. may come before the Court, to be especially convened at in three days from the date hereof, to answer concerning the premises.

AND hereupon the said Judge shall command to the said E. F. that all other things omitted, he be in his proper person at the said Court, for the said county, to be especially convened on the day of at to answer as well to the said Governor and Company as to the said A. B. who, as well for the said Governor and Company as for himself, doth prosecute of and concerning the premises; and further to do and receive what the said Court shall consider in this behalf. All which shall be signed and sealed by the said Judge, and directed to the Sheriff or his Deputy of the county where the offender lives or may be found; and the said Sheriff or his Deputy shall serve the same agreeable to law, and make return forthwith; and that the said Judge, immediately upon his issuing the same, appoint a place for the holding said Court, and give notification in writing to all the other Judges of said Court, of the time and place of holding the same; and that the said Judge, so applied to as aforesaid, take good and sufficient bonds of the aforesaid A. B. the complainant, for the payment of all lawful cost that may accrue, provided said complaint should be dismissed as groundless, or should not be prosecuted to effect: Provided, however, that the offence against said act be tried in the county where such offence shall be committed.

AND be it further Enacted by the Authority aforesaid, That the said Court, when so convened, shall proceed to the trial of said offender; and they are hereby authorized so to do, without any jury, by a majority of the Judges present, according to the laws of the land, and to make adjudication and determination; and that three members be sufficient to constitute a Court; and that the judgment of the Court, if against the offender so complained of, be forthwith complied with, or that he stand committed to the county gaol where the said Court may be sitting, till sentence be performed.

THAT

THAT no complainant or informer be admitted as a competent witness to support his information, and that the said judgment of said Court shall be final and conclusive, and from which there shall be no appeal; and in said process no escoin, protection, privilege or injunction, shall be in anywise prayed, granted, or allowed.

AND be it further Enacted, That the legal mode of carrying the aforesaid act into execution shall be in force fully and completely, for every purpose therein mentioned and contained, until all offences against the same which have been committed or complained of, and which may be committed and complained of, until the expiration of ten days after the rising of this Assembly, may be fully heard, tried and determined; any thing in this act to the contrary in anywise notwithstanding.

AND be it further Enacted by the Authority aforesaid, That whatsoever person or persons shall be duly convicted as aforesaid, by the Court aforesaid, of any or either of the offences in the act aforesaid enumerated, mentioned and expressed, shall for the first offence forfeit and pay as a fine not less than the sum of Six Pounds, lawful money, and not exceeding the sum of Thirty Pounds, at the discretion of the Court; one moiety thereof to and for the use of the person who shall inform of and appear to prosecute the same, and the other moiety to be paid into the General Treasury of this State; and that the offender so convicted pay all costs of prosecution and conviction; and also he, she or they, so offending again, for every after offence, upon due conviction thereof, shall forfeit and pay not less than Ten Pounds, and not exceeding Fifty Pounds, lawful money, to be recovered and appropriated agreeable to this act.

In the Lower-House, August 26, 1785.

RESOLVED, That the preceding bill pass as an act of this Assembly.

Voted, &c.

B. BOURNE, Clerk.

In the Upper-House.

READ the same day and concurred, with these amendments, that the Secretary cause the said act to be published in the Newport and Providence news-papers:—And that no complaint of information shall be received by any of the Justices of the said Courts, that is not made in due form, according to this act, within ten days after the offence shall be committed. *Voted and passed.*

By Order.

H. SHERBURN, Deputy-Secretary.

In the Lawyer House

Rev. Gladden

R. Raman et al.

31 DE 63